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THE FASTEST GROWING CHURCH IN THE WORLD

by Brother Keith E. L'Hommedieu, D.D.

It's quite safe to say that of all the organized religious sects on the current scene, one church in particular stands above all in its unique approach to religion. The Universal Life Church is the only organized church in the world with no traditional religious doctrine. In the words of Kirby J. Hensley, founder, "The ULC only believes in what is right, and that all people have the right to determine what beliefs are right for them, as long as they do not interfere with the rights of others."

Reverend Hensley is the leader of the worldwide Universal Life Church with a membership now exceeding 7 million ordained ministers of all religious beliefs. Reverend Hensley started the church in his garage by ordaining ministers by mail. During the 1960's, he traveled all across the country appearing at college rallies held in his honor where he would perform mass ordinations of thousands of people at a time. These new ministers were then exempt from being inducted into the armed forces during the undeclared Vietnam war.

In 1966 Reverend Hensley was fighting the establishment on another front. The IRS tried to claim the ULC wasn't a legal church and proceeded to impound the ten thousand dollars in the church bank account. The feisty Hensley filed suit against the IRS in federal district court for return of the funds and to permanently establish the ULC as a legal tax exempt entity. On March 1, 1974 Judge James F. Battin ruled against the IRS in his decision which stated, "Neither this court or any branch of this government will consider the merits or failacies of a religion. Nor will the court praise or condemn a religion. Were the court to do so, it would impinge upon the guarantees of the First Amendment." The judge then ordered the IRS to return the impounded money and to grant the Universal Life Church its tax exempt status.

Reverend Hensley has stated that he believes a church is people and not just a fancy building. He also believes in total freedom and equality for all people. The ULC will ordain anyone without regard to religious beliefs, race, nationality, sex or age.

The ULC's success formula is both effective and unquestionably legal. After a person has become an ordained minister, he or she can join with two other people and form their own Universal Life Church. These three people then make up the Board of Directors consisting of a Pastor, a Secretary and a Treasurer. The ULC will then grant the group the use of its legal church charter complete with both federal and state tax exempt numbers. The newly formed church may then open a bank account in the church's name. Any member of the church can legally donate up to 50% of his or her outside income to the church and take a corresponding tax deduction. The church in turn can pay the complete housing cost of its minister including rent or mortgage payment, insurance, taxes, furnishings and repairs. The church can also provide the minister with full use of an automobile as well as pay for travel and educational expenses. None of these expenses are reported as income to the IRS. Recently a whole town in Hardenburg, New York became Universal Life ministers and turned their homes into religious retreats and monasteries thereby relieving themselves of property taxes, at least until the state tries to figure out what to do.

Brother L'Hommedieu is Chairman of the Board of Trustees of the Sacerdotal Order of the Universal Life and serves on the Board of Directors of the International Universal Life Church, Inc.

Churches enjoy certain other tax benefits over the common man on the street. For instance, a church can legally buy and sell real estate or stocks and bonds completely tax free. It can receive tax free income from bank deposits or mortgages. Many churches own large publishing, recording, or other related businesses like hospitals, clinics and schools without paying any income tax.

A church can sponsor any kind of fund raising event such as a concert, play or even bingo. Churches are also exempt from paying inheritance taxes. When the pastor of the church dies, the Board of Directors simply appoints a new pastor and the church goes on.

Reverend Hensley has stated that he personally doesn't believe in the tax exempt status of churches. However, if the government is going to give a free ride to Billy Graham and the Pope, then why not let everybody participate in these blessings. Furthermore, he backs his words up by offering to defend in court the tax exempt status of his congregations.

Since the church was founded in 1962, it has attracted members who are movie and TV personalities, businessmen, government officials, lawyers, and doctors as well as all types of regular working people. During the last 15 years the Universal Life church has blossomed into a full blown grass roots populace movement. Reverend Hensley is ordaining ten thousand new ministers a week and predicts that the church will have over 20,000,000 members by the early 1980's. In addition, requests for interviews and TV appearances continue to pour in.

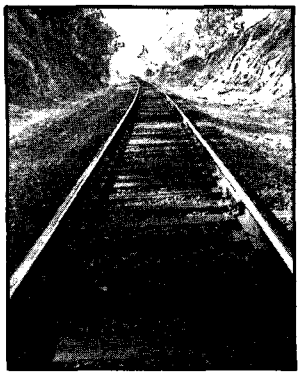
Anyone who is a member of the ULC will tell you that the ULC is destined to change the world. By unifying mankind into a brotherhood of freedom orientated individuals, each respecting the other's right to live life as they see fit, the Universal Life Church hopes to put an end to all wars. Reverend Hensley admits that this is a pretty monumental task to accomplish, but he also points out that he is already well on the way to reaching his goal.

Rev. Hensley invites all those interested in becoming an ordained minister and receiving complete information and Minister's Credentials, to send a 10^{00} tax deductible donation to the Universal Life Church, 1335 Seabright Ave., Dept. **811,** Santa Cruz, CA 95060

March 1981/Vol. 12, No. 11

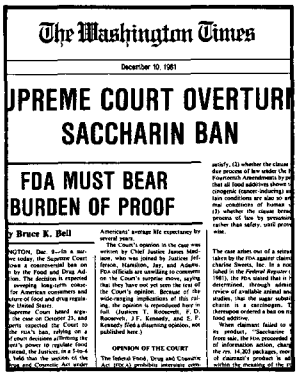
reason

A forum for analysis and commentary, with an emphasis on individual liberty.

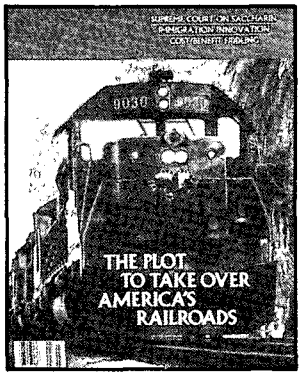


Rolling toward ruin 20

Pumped-up benefits 29



Bitter pill for FDA 35



Cover photo by Mehosh E. Dziadzio

THE PLOT TO TAKE OVER AMERICA'S RAILROADS
A little regulation here, a little subsidy there, a little control everywhere...pretty soon you're talking about nationalization of one of our vital industries.
By William D. Burt **20**

CONCEALED COSTS/BLOATED BENEFITS
Any business would sink in a wink if it made investment decisions the way this government agency does.
By John Semmens **29**

SOME THOUGHTS FOR THE NEW PRESIDENT
Wherein Mr. Reagan is admonished to pursue the best that conservatism has to offer.
By Tibor R. Machan **33**

SUPREME COURT OVERTURNS SACCHARIN BAN
Reproduced for the first time, the full text of the Supreme Court's opinion in its December 1981 ruling against the FDA.
By Bruce K. Bell **35**

WHO CAN CROSS OUR BORDERS?
If the "immigration problem" often seems intractable, perhaps it's because we're not imaginative enough.
By David J. Rees **42**

EDITORIAL/Biting the Bullet **8**
VIEWPOINT/The Election: The Case for Pessimism **46**
HEALTH & WELFARE/ Jet Lag, or How to Reset Your Internal Clocks **47**
TAXES/What Will Reagan Do about Taxes? **48**
SPOTLIGHT/Popular Scientists **49**
EDITOR'S NOTES **4**
LETTERS **8**
BRICKBATS **10**
TRENDS **12**
MOVIES **50**
BOOKS **51**
RUDEBARBS **56**
CLASSIFIEDS **57**

REASON is published monthly by the Reason Foundation, 1129 State St., #4, Santa Barbara, CA 93101. Tel. (805) 963-5993. Second class postage paid at Santa Barbara, CA, and at additional mailing offices. Postmaster: Please send Form 3579 to REASON, Box 40105, Santa Barbara, CA 93103. Copyright © 1981 by the Reason Foundation. All rights reserved. Opinions expressed in signed articles or columns do not necessarily represent the view of the editors.

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CHANGE OF ADDRESS: Please allow six weeks for change of address. Send address label and new address to Circulation Dept., REASON, Box 40105, Santa Barbara, CA 93103. Requests for missing issues due to late notice of change of address, or older than two months from current date, will not be honored unless accompanied by payment.

ISSN 0048-6906

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SUBSCRIPTIONS: Subscribers are members of the Reason Foundation. Membership (US residents) is $19.50 per year, of which $6.25 is set aside for publication costs. Long-term rates: 2 years, $34.00; 3 years, $45.00. Other countries add $4.00 per year.

BACK ISSUES: Write for back issue list for current prices. Volumes 1-4 are available on microfilm from University of Southern California Library Micrographics Dept., University Park, Los Angeles, CA 90007. Volumes 5 and up are available from Xerox University Microfilms, 300 North Zeeb Rd., Ann Arbor, MI 48106. Indexed in *America: History and Life, Historical Abstracts,* and *Public Affairs Information Service Bulletin.*

editor's notes

We're inaugurating a new feature this month—another column aimed at giving you directly useful information. No doubt some of you have seen Durk Pearson on television. His appearances on the Merv Griffin show result in hundreds of thousands of letters; he's become the most popular guest in the show's history. To those of you who've never seen it, though, a word of explanation is in order. Durk is a scientist, but unlike most such people, he knows how to communicate highly technical matters in straightforward, down-to-earth language. He and his research partner, Sandy Shaw, consult with high-technology companies, advise science fiction movie producers, and conduct their own research on the effects of nutrition and drugs on human intelligence and longevity. This work, in particular, brings them squarely up against the often ridiculous regulations of the FDA. A big part of Durk's TV appeal seems to be his readiness to speak his mind about this sort of thing—and to tell people how to help themselves, despite the FDA's over-protectiveness.

I've known Durk and Sandy for more than 10 years. Durk graduated from MIT the year before I did. We thought up the idea for the column on their recent speaking trip to Santa Barbara, where they were guests at the Reason Foundation. We're calling the column "Health and Welfare." It's about time people took over responsibility for these areas, and that's what the column will help you to do. I hope you like it.

One of the Reason Foundation's aims is to advance the state of the art regarding how a truly free society would function. Some of today's areas of great conflict—water rights, fishing rights, pollution, seabed mining, use of electromagnetic frequencies—are fields where property rights have never been recognized. Could such rights be established? Would doing so provide good solutions? What legal and political barriers stand in the way? Those questions were the subject of two days of intensive brainstorming in Santa Barbara last November 21 and 22, as the Reason Foundation hosted a Liberty Fund colloquium on the extension of property rights. Our Educational Programs Director, philosopher Tibor Machan, and I took turns leading the discussion sessions. Contributing ideas and insights were legal experts Norman Karlin, Davis Keeler, and Manuel Klausner, along with economists Robert Bish, Robert Deacon, David Fractor, Delworth Gardner, Paul Heyne, and Richard Stroup. Another philosopher, Eric Mack, and several technologically oriented thinkers—Joseph Martino, Gerry Sauer, and Charles Trees—rounded out the program. Since the purpose of a colloquium is brainstorming, no formal output was produced. But exciting ideas were developed and useful information exchanged. Everyone agreed that property rights *can* be extended to these new areas, and the prospects for doing so appear good in several of them.

You may recall our story on tritium last March—an example of radiation hysteria over an Arizona watch dial factory that used tritium, an extremely weak beta emitter, to make glow-in-the-dark dials and read-outs. I thought you'd be amused by another such incident, as reported in *Aviation Week* (Nov. 24). It turns out that Europe's hottest jet fighter, the Panavia Tornado, had to be grounded in Germany so that tritium readout devices could be removed from the cockpit panels. West Germany has a law forbidding "beta bombardment" of people, the Luftwaffe discovered. The British and Italian air forces, which also fly the Tornado, were reported "combing the law books" of their countries to see if they, too, would have to ground their planes.

Just in case you don't get enough Robert Poole each month in REASON, you may soon be able to hear me on radio—along with Jim Davidson of the National Taxpayers Union, Richard Wilcke of the Council for a Competitive Economy, Tom Bethell of *Harper's,* Bob Hessen of the Hoover Institution, Ed Feulner of the Heritage Foundation, and George Gilder of ICEPS. The program is a radio commentary series produced by ICEPS—the International Center for Economic Policy Studies in New York, a free-market-oriented think tank. The series, called "As a Matter of Fact," had 200 stations signed up as of the first of the year.

Ben Rogge died on Nov. 16. Rogge introduced me to the term *libertarian* via the pages of the *Freeman* back in the 1960s. Formerly dean of Wabash College, he had been Distinguished Professor of Political Economy there since 1964. His works include *Can Capitalism Survive?* published last year.

—R. P.

"MOST OF WHAT YOU HAVE WILL BE WIPED OUT IN THE COMING CURRENCY COLLAPSE— UNLESS YOU'RE READY FOR IT!"

"HYPERINFLATION WILL RENDER THE DOLLAR UTTERLY WORTHLESS— PROBABLY WITHIN 3 YEARS—CERTAINLY WITHIN THE DECADE" ***Jerome F. Smith***

That is the carefully weighed conclusion — *and warning* — of research economist Jerome Smith. Hailed by thousands as the world's premier investment forecaster, Smith established a remarkable record of accuracy during the decade of the 70's — a record which overshadows even the greatest legends of Wall Street. Now in his new book, ***The Coming Currency Collapse*** And What You Can Do About It, he shows investors how to prepare for an unprecedented and *imminent* collapse of the world's currencies.

More than any other person during the 70's, Jerome Smith led the way in establishing successful investment principles for the decade — rules which have resulted in *some of the most dramatic investment profits in the history of capitalism.* Consider what Harry Browne, the well known and highly successful money expert, said of Smith: "The immense profits made by myself and (my) readers... are due in large part, to Jerome Smith's trail blazing."

Now in ***The Coming Currency Collapse,*** Jerome Smith warns that we have entered a new, more dangerous, inflationary climate, on a global scale. He explains why successful investing — *and even survival* — in the decade of the 80's requires alterations in investment strategy and he spells them out in detail. No panic measures; armed retreats in the mountains; or exotic, costly investments — just plain logical solutions that you can easily implement.

Hyperinflation Is Now Unavoidable!

While it's clear that the world economy is approaching a severe crisis, there is great confusion as to *what form* it will take, and therefore what type of investments to make. With few exceptions the correct investments for a depression as in 1929, are the most dangerous ones during a runaway inflation and vice versa!

In ***The Coming Currency Collapse,*** Smith ends this confusion, demonstrating that runaway inflation is now unstoppable.

"Once the inflationary blowoff starts, it will proceed like a whirlwind."

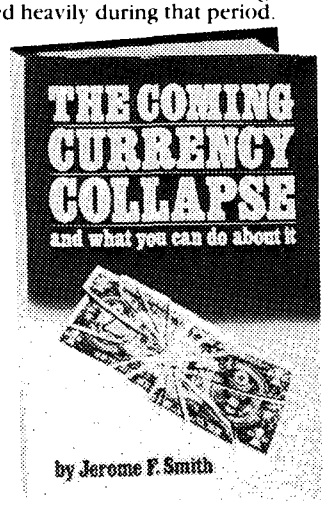
Smith goes on to describe the "trigger" mechanism which could render the dollar worthless in a matter of months. Such conclusions may appear drastic, but considering Smith's past record of successful forecasting, *it would be unwise to ignore them.*

Now, in 1980 in this landmark book, Jerome Smith offers compelling evidence that the structure of our present political institutions will lead to hyperinflation within this decade! Can you afford to ignore this warning?

Smith's Remarkable Record

Smith's record is *unique* in the field—*all* of his recommendations have been profitable!

- In 1971, Smith published the classic SILVER PROFITS IN THE SEVENTIES — the book which became both the theoretical and practical manual for thousands of silver bulls (including the Hunt brothers) who have, at today's price of $18/ounce accumulated *billions* of dollars in profits.
- Smith recommended gold at $42.50 in 1971, and again at $143 in 1977. It's currently over $600 an ounce.
- In 1973, he predicted the oil embargo months before it was imposed.
- In 1977, he strongly recommended platinum, at $147/ounce, just before it began its meteoric climb to $1,000/ounce.
- He stood alone in early 1979, insisting that the widely expected recession would not occur in that year. It did not.
- Throughout the 70's, he advised avoiding traditional investments, which generally suffered heavily during that period.



Here's How To Prepare For This Unprecedented Turbulence:

Runaway Inflation Investments
- The 3 primary ground rules for investing during a runaway inflation.
- The 8 tests of a particular investment's suitability under hyperinflation.
- The *single best investment* for a runaway inflation.
- What the "trigger" is for the final hyperinflationary explosion that could render the currency worthless in a matter of months.
- The 3 most dangerous investment traps under runaway inflation.
- How to become part of a new and unprecedented era of prosperity and progress after hyperinflation runs its course.

Precious Metals
- Gold and Silver investments — how and where to hold them.
- Jerome Smith's present choice for the best precious metal investment.
- Silver profits in the eighties.

Foreign Currencies
- Which foreign currency Jerome Smith believes may prove to be a safe financial haven.

Stocks
- 13 management rules *crucial* to keeping portfolios out of trouble and positioned for profit.
- 3 critical ratios for choosing a stock.
- 7 crucial timing rules for the 80's — when to buy, when to get out.

Real Estate
- City property vs. farmland: The crucial difference that makes one far superior during severe inflation.

Insurance, Bonds, Pensions, Bank Accounts
- Why such investments could become worthless in ten months, or even ten weeks! What to do if your holding them now.

Privacy And Swiss Banking
- How to select a Swiss bank and open accounts.
- What *dramatic* development in the Swiss franc to watch closely.

Collectibles
- How to avoid the major pitfalls in investing in fine art, antiques, rare stamps, numismatic coins, and other collectibles.
- The *one essential rule* to follow when investing in collectibles.
- What may be the single best collectible now.

Money back if not satisfied!

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Biting the Bullet

editorial

PRESIDENT REAGAN HAS a clear opportunity to seize the initiative in his first 100 days in office. If he does so, he can turn this country around, restoring the vitality of its economy and the confidence of its people. If he temporizes, even for a few months, then "politics as usual" will take over and the opportunity will be gone. The nation's problems—soaring inflation, decaying industry, bloated bureaucracy—are so severe that the first course, however difficult, offers the only way out. Herewith, then, our suggestions for the first 100 days, some possible by direct executive action, some requiring firm pressure on Congress.

In energy, restore the free market now. This country is dangerously dependent on the whims of Middle Eastern dictators and fanatics because of our dependence on foreign oil *and* because of the vast array of federal controls that prevents the marketplace from allocating gasoline where it's needed during shortages and that actually forbids the substitution of domestic natural gas for imported oil. The whole business—oil and natural gas price controls and the entire petroleum allocation system—should be abolished at once. So should the federal Synthetic Fuels Corporation, before it becomes even more entrenched. That, in turn, would remove the "need" for the "windfall profits" tax, sure to be fought over later in the year. These moves would, over the next several years, substantially reduce our dependence on oil imports.

To reindustrialize, end the war on business. George Will told a monetary conference last fall that any government which subsidizes its Chryslers while breaking up its IBMs has serious problems. Just so. Letting Chrysler expire would send a vital message to American industry: there will be no more bailouts. At the same time, it is vital that our antitrust laws be vastly cut back or abolished; even left-wing economists like Lester Thurow can see the harm that these laws do to the competitiveness of US industry in the world arena. As a first step, President Reagan could drop the current cases aimed at breaking up IBM and AT&T. Like the Chrysler bankruptcy, the move would have great symbolic value, putting the world on notice that American productivity will once again be a force to be reckoned with.

The president should also make clear that there will be *no more* tariffs, quotas, or "orderly marketing agreements" and that he will work to phase out those that exist. If Chile and Argentina can come around to free trade, why can't we? At the same time, however, a plethora of regulatory burdens can be lifted, many by Reagan himself, so that industries can devote their attention to serving their customers. The auto industry, in particular, should be freed of "passive restraint" regulations and additional safety and emission requirements, which promise only marginal improvements at a high cost. Further, decontrolled gasoline prices would spur lagging sales of Detroit's new high-mileage cars.

On government spending, gore everyone's ox. There is simply no way to balance the federal budget, let alone cut back on government, if sacred cows are allowed to exist. A new form of log-rolling is required in Congress: "You support cuts in my program, and I'll support cuts in yours." Intelligent hit-lists abound. The Heritage Foundation's *Agenda for Progress* details $58.6 billion in domestic spending cuts; Libertarian Ed Clark's *White Paper on Taxing and Spending Reduction* offered a more drastic (but quite defensible) $150 billion agenda. Among the obvious targets for elimination are such pork barrels as the Export-Import Bank, the Space Shuttle (privatize it), EPA grants for sewage treatment plants, HUD and EDA economic development grants, Army Corps of Engineers waterway projects (try user charges), UMTA mass transit grants, Amtrak subsidies, and the CETA program. There would be weeping and wailing and gnashing of teeth, but if the sacred cows are all butchered at once, the special interests will lose their traditional clout, and for once the *taxpayers* can have a barbecue.

Finally, *on defense, be willing to make tough choices.* As we have said repeatedly in these pages, while many defense deficiencies must be repaired, that is no reason to give the Pentagon a blank check. Defense Secretary "Cap the Knife" Weinberger and OMB director David Stockman must insist on clear definition of strategic objectives and pursuit of cost effectiveness. Taxpayers cannot afford *both* a B-1 derivative *and* a Stealth bomber; accelerated MX *and* Trident II *and* Minuteman upgrading. (Our own choice would be to scrap MX, letting the Air Force have cruise missiles and its choice of bomber, while going all-out to develop laser ABM weapons.)

At the tactical level, a free-market energy policy cuts the props out from under any case for a Rapid Deployment Force to seize Middle East oil fields (which is what it's designed for). Scrapping the RDF would relieve the fears of Persian Gulf governments, and the money could be used to rebuild inventories of spare parts and ammunition and to increase military pay to the levels needed to ensure retention of skilled technical personnel. That would also enable Mr. Reagan to make good on his promise not to restore the draft.

The temptation to go slow, to get along, to be "realistic," will be immense. It is vital that Mr. Reagan resist it. If ever there was a time for strong, principled leadership, it is now. If this opportunity to cut back on government and revitalize the private sector is muffed, then the road to serfdom is all that lies ahead.

Robert Poole, Jr.

The Swiss Franc Retirement Plan.

"When the dollar is worth nothing, what will your retirement income be worth?"

1. Unmasking the Great Retirement Hoax.

Americans tend to be trusting people. When government leaders, employers and union officials all assure us over and over again that our financial preparations for retirement are adequate, we assume that it must be true.

Well, don't believe it! *We've all been victims of a gigantic hoax*—and it's about time someone blew the lid off the whole incredible mess.

The Social Security system is on the verge of bankruptcy. Newspaper headlines regularly announce pension fund problems. Insurance policies, savings accounts, stocks, real estate and other investments are ravaged by inflation and taxes.

If you're depending on any of these sources to provide you with a retirement income, you're in for the shock of your life. Prudent, reasonable people who made what they thought were ample preparations for their retirement years are now barely managing to stay afloat. *And it's going to get a lot worse!*

This is what we call The Great Retirement Hoax: telling people that Social Security or dollar-denominated investments will guarantee their financial security in the years ahead.

The truth isn't always pleasant to hear. But you're better off knowing the facts. That way, you can take action to protect yourself while there's still time.

2. ANNOUNCING "The Swiss Franc Retirement Plan."

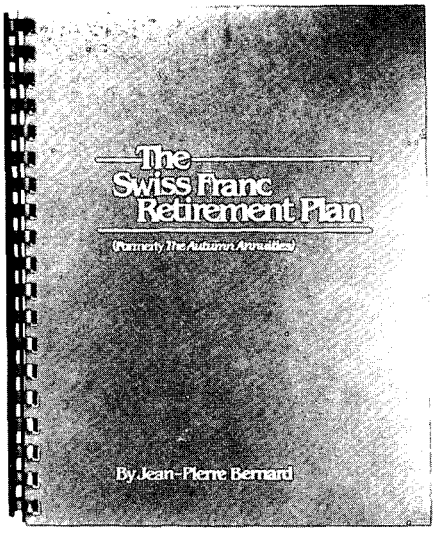
Fortunately, *there is* a solution: *Swiss franc annuities.* A life income guaranteed you by a Swiss insurance company—and paid to you not in depreciating American dollars but in strong, stable Swiss francs.

In the Spring of 1970, two men retired. Both began receiving life incomes of $1,000 a month. Today, one man's monthly income is still $1,000—but it's worth only $647 in purchasing power. Meanwhile, the other man's monthly income has *more than doubled*—to $2,150. And his purchasing power is correspondingly greater.

Why the difference? The second man bought a Swiss annuity policy. His life income is paid in Swiss francs—which he converts to dollars as each payment is made.

Here are some of the advantages of The Swiss Franc Retirement Plan:

- The Swiss franc is the world's strongest currency.
- Swiss franc annuities keep you well ahead of inflation.
- Their dividends alone can raise your life income by 10 to 15 percent.
- Of all Swiss franc investments, annuities offer *the highest safe yield.*
- The policy you purchase can begin paying immediately—or payments can be deferred *until you retire.*



- If you wish, you may select a policy that covers your beneficiary as well.
- You are exempt from all Swiss taxes.
- There is no U.S. financial reporting requirements for annuities or insurance contracts.
- You *diversify* a portion of your assets *internationally*—an important hedge in these uncertain times.
- No medical exam is required.
- *And the income is guaranteed as long as you live—in Swiss francs!*

3. The stability of Switzerland is behind you.

Switzerland's reputation for financial stability and integrity spans more than two centuries. Many Swiss insurance companies have been in business for more than 100 years—*and not one has ever failed.* They are all governed by the world's strictest insurance regulations and the same privacy and confidentiality laws that apply to Swiss bank accounts.

But is the Swiss Franc Retirement Plan *legal?* Absolutely! There are no U.S. laws whatsoever that prohibit Americans from investing their funds in a Swiss annuity. And neither is there anything "unpatriotic" about protecting yourself and your family from the destruction our government has wrought upon the dollar. Self-defense is more than your *right*—it's your *obligation.*

4. The next step.

Will your insurance broker help you set up a Swiss Franc Retirement Plan? Not likely. He probably knows little or nothing about the subject.

But now there's an authoritative book that tells you everything you need to know. It's called *The Swiss Franc Retirement Plan.*

Simply, clearly, in step-by-step "how-to" language, *The Swiss Franc Retirement Plan* spells out:

- Exactly what Swiss franc annuities are and how they work.
- The kinds of annuities available.
- How to obtain a policy tailored specifically for your needs.
- How to receive payments.
- Names and addresses of Swiss insurance companies.
- Forms you can tear out and mail to receive information and quotations from each company.
- Valuable charts and tables.
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letters

In Black and White

There is something infinitely offensive about the last line of the December Spotlight feature by Patrick Cox. After citing the marvelous efforts of Leon Louw and the Free Market Foundation in South Africa, Cox ends with "I have been wondering... How hard is it to get South African citizenship?"

Perhaps the offensiveness lies in the display of naiveté in the belief that the deeply ingrained statism and racism of South Africa is about to be swept away. More likely, it lies in the fact that Cox automatically adopts the perspective of a potential *white* citizen of South Africa. For, exciting as Louw's successes may be, they certainly would not inspire any black observer to start to think longingly about immigration to South Africa. It is this unthinking identification with the state of things for South African whites that undercuts Cox's official concern for all of the innocent victims of the South African regime.

Eric Mack
New Orleans, LA

A Plea for the Melting Pot

As a new subscriber to REASON, I was astonished at the naiveté displayed by Murray Rothbard in his Viewpoint column (Dec.). In the first place, despite his obviously compassionate nature, he must be aware that overpopulation has become the major problem of the world, and the United States is no longer the wide-open expanse of unpopulated terrain that it once was, and hence can no longer support waves of immigrants. In the second place, many of these immigrants come from cultures which advocate and practice the mindless spawning of hordes of children for whom they see no means of support. These are the people who are aiding in the destruction of the ecology of their own countries, as witness the desertification of immense areas of Africa. For the sake of its own survival, the United States cannot afford to become a dumping ground for such irresponsibility. And yet, not so long ago the President of Mexico cynically remarked that Mexico's overpopulation and the subsequent wetbacking of millions of Mexicans to America was America's problem, not Mexico's.

Furthermore, Rothbard speaks of the immigrants "blending into the American population." Such a view has been anathema to American liberals since Johnson's Great Society began. The melting pot concept, which really built up a strong nation from its early immigrants, has become a dirty word. A multicultural society has been urged and supported—and even enforced—by HEW and other government agents for more than a decade, to the detriment of general literacy (thanks to "bilingual-bicultural education" among other factors) and with an increase in divisiveness along cultural lines. More than all others, Hispanics have been vociferously and even violently opposed to assimilation into mainstream America.... Some time ago I sat in a conference of teachers in New Mexico and witnessed one militant chicano teacher after another stand up and loudly proclaim that he or she was not American and would not subscribe to the American culture. After more than a century of living within the bounds of the United States, many New Mexicans still abjure the English language. Any anthropologist or linguist can tell you that primary loyalty goes with what is regarded as the primary language. Lenin taught that an effective way to divide and conquer a country was to exploit its cultural differences.

An immigrant does not have to turn violently upon his former culture and reject it totally—our Oriental citizens have proved this point—but he should certainly pledge total allegiance to his new homeland and forswear any cultural habits or attitudes which might be detrimental to his adopted society....

Fred West
Whitsett, NC

Nuclear Power in Sweden

In "Who Caused Three Mile Island?" (Aug.) you state that operation of nuclear power plants is a government monopoly in all countries except the United States, Canada, and West Germany. Believe it or not, Sweden should be added to the list.

Right now four companies in Sweden are operating a total of eight reactors (four more are under construction). One of the companies is 100 percent government-owned (Vattenfall), one is majority-owned by the first 100 percent government-owned company, but companies listed on the Stockholm stock exchange have a significant minority equity, as has the City of Stockholm. The third company is listed itself on the Stockholm stock exchange (I really should have bought stock a couple of years ago; the company is, thanks to their nuclear power plants, one of the most profitable in the country). This company, Sydkraft, also owns a significant minority share in the fourth company OKG. The rest of OKG is owned by companies listed on the Stockholm stock exchange and some other big companies. OKG was the first company to take a commercial nuclear power plant into operation in Sweden in 1971. Accumulated profits of this plant have been just tremendous.

Carl G. Holm
Stockholm, Sweden

Van Norman Dam, Again

After your excellent analysis of the nondisaster at Three Mile Island (Aug.), involving hundreds of nondeaths, thousands of noninjuries, millions of Federal Reserve Units' worth of nondamage, and the consumption of trillions of cubic feet of precious and irreplaceable Hot Air by the news media, I was startled by your remarks about the Van Norman Reservoir incident in Los Angeles due to the 1971 earthquake....The Van Norman Dam did *not* "break." All that happened in fact were some partial cracks in the facing. The dam did *not* "happen to be empty." In fact, it happened to be full. When the damtenders noticed the surface damage, they promptly began to sluice-off the water, eventually emptying, or nearly-emptying, the reservoir.

Had that not been done, and had the cracks progressed to a total rupture the failure would *not* have "killed between 50,000 and 100,000 people." Over a large area downstream, everybody had been evacuated and, if the dam had failed, it would have damaged empty houses and have killed the odd looter.

For those who fret about practical impossibilities, had the Van Norman Dam failed immediately upon the earthquake, perhaps 50 to 100 people would have been killed, and a thousand times as many inconvenienced. That's a function of topography and hydrodynamics. Only those who lived in the natural wash, or barranca, or arroyo, were in any danger, and people who build houses in such places

(Continued on p. 55.)

UNDERSTANDING SOCIAL REALITY: THE INDIVIDUAL AND THE SPONTANEOUS ORDER

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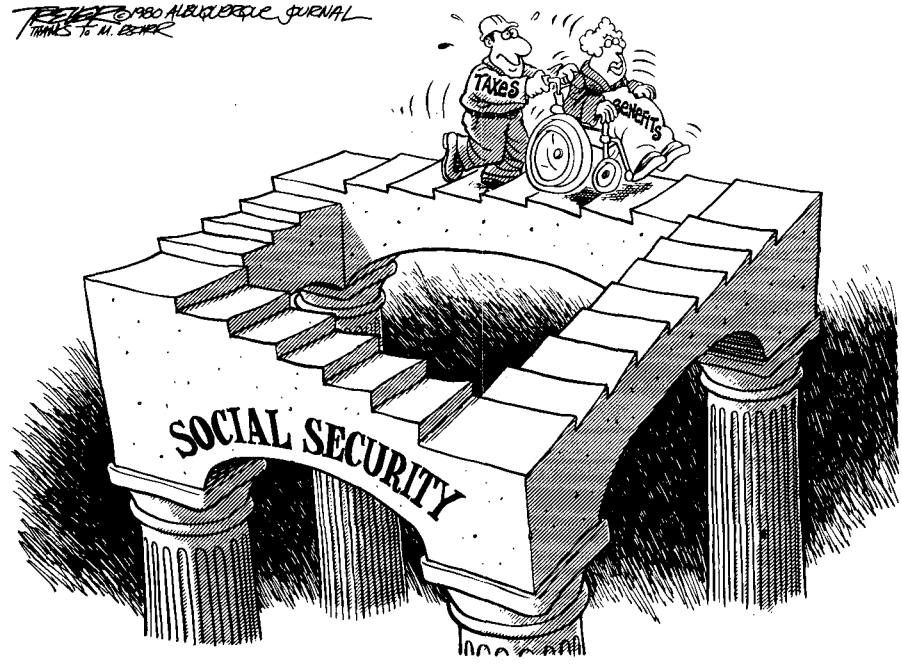
brickbats

☐ **The Union of Soviet Socialist Republics** has scored still another blow for the dignity of man. In the Christmas just past, merry proletariats celebrated the Joy of Marx with a blissful new holiday gift sensation: toilet paper subscriptions. Due to the responsibilities of international leadership, the USSR's resources are a bit strained lately (like the past 64 years, approximately), and the traditional T.P. is rather tough to come by. This is a small sacrifice that all socialist workers for brotherhood and justice are happy and honored to make so as to advance the cause (and Red tanks in Kabul). Yet, a nice wipe would be a great gift idea. And so...voila! Sovietland's "toilet paper futures" now grant the bearer of such card to be the first in line whenever any store actually has the single-ply (they must be singles—any more would be too wasteful) tissue available for purchase. "My mother enrolled for a subscription," proclaimed one Russian revolutionary, "and she thinks it's wonderful. She called me all excited and said, 'I hope for the day that you too can buy toilet paper this way.' " Oh, just give 'em time. What's the rush? There is always *Pravda*.

☐ **At least morals** are still alive in India. The world's largest democracy (oops, well, sort of—until Indira started throwing everybody in jail, anyway) has given life to gangs of "Marxist-leaning intellectuals" who "are trying to wage war against dramas with scenes they consider sex-provoking and bad for morals." The Commie-Puritans have labeled half a dozen Calcutta plays "obscene" and "perverted." The protesters rally outside performances complaining about the sex scenes and urging patrons to boycott "filthy shows put up by filthy people who think art and culture are centered only around one's groin." They blame "the bourgeois culture whose aim is to dynamite the people's movement and woo people toward cheaper things." It must be true. The shows have continued to play to packed houses for more than a year.

☐ **Elsewhere around the globe,** the red menace is just warming up. In China, for instance, they're getting all hot and bothered. In a titillating volume delicately labeled *Sexual Knowledge,* the Chinese Communists have broken the three-decade silence on certain well-known bodily functions especially popular in Hollywood (and rabbit colonies). A skimpy 74 pages long, the booklet has sold out quickly and may be headed for a second printing of another two and a half million. While giving no specific directions on what goes where, it does have pictures of private parts and helpful hints on how often the Big Number ought to be performed—they've had quite enough if they "feel tired; heavy-handed, if their legs are tingly and ticklish, if their hearts beat rapidly and they're short of breath or lose their appetites." The no-no to be watched, of course, is the ever-popular "hand lewdness." Flying solo is said to promote "guilt, insomnia, impotence" and, in the case of several American presidents, "a complete nervous breakdown." Also taboo are stimulants and dirty pictures; helpful to the cause are sports participation and a warm foot bath before bed. Above all, sex must not be confused with the greatest thrill of all: "Labor and serving the people is the most glorious, great and prestigious cause."



☐ **A San Francisco woman** has died in a fire, while city firefighters sat through "a four-hour abalone dinner." Their fire station was but a half-block from the burning apartment building but was closed down while the public servants traveled across town to feast on the shellfish gathered by another city fire station. Louise Jenkins, a 66-year-old widow, died on the fourth floor when no one at the nearby station responded to neighbors' yells.

☐ **Tom and Jane Fonda-Hayden** are really getting screwed. I mean, they've got this nice little piece of property up in Santa Barbara, and they paid good money for it—*their* money—$500,000 big ones back in 1977. And now they want to put a magnificent children's theater up there so as to entertain all the swell youngsters who will be going to their super summer-camp in years to come. It's *their* land, and they *own* it, and they aren't hurting anyone else, and why can't they do what they want? Right? Wrong, Tom and Jane. You can't. Tough Taco. No way. See ya later. It's just like this: There are these things called "land-use controls." And they give local politicians the right to decide about what people can do with the land they own. Now, Tom and Jane, y'all thought it was pretty nifty when all kinds of scummy developers and low-income people were bounced right out of those really pretty suburban hideaways you $500,000 ranch people like to hang out in. But the same scoundrels whom you gave the power to decide land-use then, they've got it now—right when *you* need a permit just to let kids have a theater. And these politicians, neighbors of yours, they don't like you. They think you're Reds! They think you're gonna "brainwash" those kiddies! And so they can stop you from putting that theater in on your land. They are The People, and they have The Power. Thank you, Tom and Jane!

—Thomas Winslow Hazlett

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trends

Transportation Transformation

What sort of transportation policy can we expect from the Reagan administration? If the transition team's recommendations are followed, expect little short of a revolution in federal policy. As leaked to the *Wall Street Journal,* the new policy would:

- Close down Conrail, selling off its viable lines to the private sector and abandoning the rest
- Cut out Amtrak's money-losing long-distance routes
- Stop funding such boondoggles as subways and downtown people-movers
- Stop subsidizing the operating expenses of local transit systems.
- Encourage jitney service and other forms of private transit
- Close down the National Highway Traffic Safety Administration, which has "done enough" to promote auto safety
- Make road users pay their full shares of road construction and maintenance via gasoline user taxes
- Close down the Civil Aeronautics Board prior to its 1985 termination date, and speed up decontrol of trucking and railroads by the Interstate Commerce Commission.

The first sign that the Reagan people may be serious about this agenda occurred during the lame-duck session of Congress in December. Pressure from GOP Senators succeeded in killing a five-year $25.5 billion mass transit aid program, despite heavy lobbying by urban interest groups. Had the bill passed, it would have made it impossible to cut back transit spending in the dramatic ways contemplated.

Airline Safety, Revisited

Some time ago this column presented data on the comparative performance of US domestic airlines in violating federal safety rules (see "Which Airlines Are Safest?" Trends, Dec. 1979). Legitimate questions were raised by several readers regarding (1) whether safety-rule violations were the best measure of actual risk to passengers and (2) whether revenue passenger miles was the best normalizing factor. We are pleased to present the results of an alternative approach to the problem.

MIT researchers Arnold Barnett, Michael Abraham, and Victor Schimmel recently reviewed the problem on an international basis, comparing the safety of 58 major airlines, 18 domestic and 40 international carriers. As a safety measure, they decided to use the number of fatal accidents over a long period of time. As a normalizing factor, they chose the number of flights performed over the period. Using these measures they define an "average fatality quotient—AFQ" which is the probability that a person choosing a flight from among all the airline's flights over the period would die in an accident.

What are the results? Looking first at the 18 domestic carriers from 1957 to 1976, the researchers found differences among them, but they were not statistically significant. Of interest is the finding that the industry-wide AFQ has decreased steadily during the two decades under review.

Internationally, however, the picture is sharply different. Very large, statistically significant differences in AFQs exist, with US and other Western airlines generally being far safer than Third World and Soviet-bloc airlines. Of the 40 international carriers, the best and worst are the following:

Airline	Country	AFQ (millionths)
Malev	Hungary	88
Egyptair	Egypt	39
Viasa	Venezuela	24
Nigeria	Nigeria	20
Loftleider	Iceland	19
Varig	Brazil	18
Lan	Chile	15
Aeromexico	Mexico	14
Argentinas	Argentina	12
THY	Turkey	12
Avianca	Columbia	10
Pakistan Int'l.	Pakistan	10
	* * *	
Lufthansa	West Germany	0.4
El Al	Israel	0.2
Air Canada	Canada	0
Ethiopian	Ethiopia	0
Finnair	Finland	0
Iranair	Iran	0
Olympic	Greece	0
Philippine	Philippines	0
Qantas	Australia	0
TAP	Portugal	0

The airlines with AFQs of zero had *no* fatalities at all during the entire 1960-1975 period. The researchers point out that if United Airlines had the same rate of accidents as Malev and Egyptair, it would have one major crash every *eleven days.* Interestingly, Pan Am and TWA fall somewhere in between the best and the worst, though close to the best: their respective AFQs are 3 and 4. Data for the Soviet airline, Aeroflot, are not made available by the USSR.

Cable TV Competition

How many times have you turned off your TV, in despair at the paucity of program choices? You read about all the exciting new cable and pay-TV services—but your local cable monopoly doesn't seem to carry them. If only you had a choice....

Such choices may not be far off, however. On December 23, 1980 a California Superior Court judge in San Diego County declared unconstitutional an exclusive cable TV franchise in the city of Vista. In dismissing a suit brought by one cable firm against a competitor, Judge Anthony Joseph ruled that the state constitution provides for competition in certain fields, including communications. That, said the judge, "unquestionably precludes monopolies in those fields."

The attorney for the would-be competitor, Pala Mesa Cablevision, argues that First Amendment considerations are also at stake. "It's no different than if you granted a franchise to the *Los Angeles Times* to be the sole distributor of newspapers in the city of Vista." In Massachusetts, the same freedom-of-the-press argument has been raised by Cape Cod Cablevision in challenging the state cable TV commission's authority to regulate rates. It is no different from having a "federal newspaper commission" set rates for newspapers, says Cablevision's attorney George Shapiro.

Actually, the majority of cable TV franchises are awarded on a nonexclusive basis already—though few people realize this. Because of the inherent economic advantage of being the first operator in an area, competition from new entrants has been limited. But it does sometimes occur. Somerville, South Carolina, for instance, has two firms competing for cable subscribers, with most of the competition occurring at boundary areas. A similar situation exists in San Luis Obispo County, California. In the Vista, California case, Pala Mesa Cablevision was attempting to wire the homes in a major new housing development being built within the city limits, despite the citywide franchise

granted to Times-Mirror Cablevision in 1966. If Pala Mesa's challenge to exclusive franchising is upheld on appeal, there may not be revolutionary changes, but the threat of competition could spur cable operators to offer more choices and to hold down rates more effectively than government regulation ever could.

Rethinking the Categories

Are Americans really divided into liberals, moderates, and conservatives? The pollsters apparently still think so, but a number of political scientists believe such a breakdown obscures more than it reveals. Two such thinkers are William S. Maddox and Stuart A. Lilie of the University of Central Florida.

In a paper presented to the Midwest Political Science Association annual meeting in 1979, Maddox and Lilie isolated *four* distinct ideological belief systems, based on combinations of support for or against expanded individual liberties and support for or against government economic intervention:

		ECONOMIC INTERVENTION	
		Pro	**Con**
INDIVIDUAL LIBERTIES	**Pro**	liberal	libertarian
	Con	populist	conservative

When people are categorized in this way, they found, their positions on a wide range of issues made up consistent sets nearly three quarters of the time. What is especially interesting is how the groups so categorized compared. Libertarians, for example, top the other groups in income levels, education (extent of advanced degrees), and extent of political involvement, with populists ranking at the bottom of all three categories. In age group, those who matured during the Depression are heavily conservative and populist, those maturing in the '50s encompass all four groups about equally, the '60s generation tends toward liberalism, while the '70s group has its largest components as liberals and libertarians. Regionally, it is interesting to note that populism dominates not only the South but also the Northeast (explaining, perhaps, the Kennedy phenomenon). Given the coherence of these categories and their greater explanatory power, one hopes the pollsters and mass media will take notice.

No More Arts Subsidies?

This seems to be a time for "thinking the unthinkable" in a whole variety of fields. And among the sacred cows now being held up for serious scrutiny is the idea of federal subsidies for the arts and humanities. Last year economist Milton Friedman raised the issue; speaking at Texas A&M University, he questioned the justification of both the National Endowment for the Humanities and the Public Broadcasting System. Soon after, articles in *Policy Review* by Kingsley Amis and Ernest van den Haag questioned federal arts funding, as did a *Harper's* cover story called "The Ministry of Culture" on the National Endowment for the Humanities.

The latest salvos have come from the Heritage Foundation and the Reagan transition team. In what the *New York Times* described as a "harshly critical report," a Heritage study team attacked both the National Endowment for the Arts and NEH. The former, says the report, "spends millions of dollars yearly to fund programs and policies which are unconcerned in any way with enduring artistic accomplishments; the best of these projects do no more than fossilize the popular culture of the past, and the worst are little more than high-flown welfare and employment schemes." The NEH, says another section of the report, has become thoroughly politicized. Example: a 1980 humanities grant of nearly $200,000 was given to Working Women: National Association of Office Workers to hold classes and film forums on "the struggle of office workers for improved conditions."

The transition teams on NEH and NEA include members of the Heritage Foundation study group. Although they reportedly recommended substantial reform rather than abolition of the agencies, the *Times* reports that another segment of the Reagan camp feels "there is now no alternative but to abolish them altogether," returning arts funding to private and corporate contributors.

Florida Deregulates

In the first major application of its Sunset Law, the Florida Legislature allowed the state's truck and bus regulatory apparatus to expire last June 30. Opponents of deregulation predicted chaos, cutthroat competition, and the abandonment of small towns. But in a review of deregulation's first six months, Orlando *Sentinal Star* reporter Larry Lipman has found the actual results to be quite different.

Contrary to the predictions of the large truckers, there has been no chaos, and the large companies are not devastating the small ones. On the contrary, it is the large statewide truckers who are feeling the pinch of increased competition—from aggressive small firms and from large national carriers that can now enter the intrastate market. As far as customers are

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concerned, competition has led to discounts for truckload shipments and for big-city shippers, while small-town and low-volume shippers—who cost more to serve—are paying somewhat more. And although large truckers have abandoned some small towns, new small firms are springing up to provide replacement service.

The same thing is happening with bus service. Greyhound has dropped 110 small stations, but the average distance from abandoned stations to points retaining Greyhound service is less than 10 miles. Trailways dropped only 31 locations, an average of 22 miles from another Trailways station. But small bus companies are moving into the breach, buying new equipment and expanding services. Charter operators are expanding rapidly, too. "The people that are losing out in deregulation are the lawyers that represented people before the Public Service Commission," says Eric Annett, a small bus operator in Sebring. "The customer is coming out quite good [*sic*]."

What the Florida experience demonstrates most clearly is that regulations of this sort need not be phased out gradually. Florida's "cold-turkey" withdrawal is working quite nicely.

New Age Enlightenment

As John McClaughry noted in his review of *New Age Politics* in these pages (Aug.), there's more to the "New Age" movement than meets the eye. What might appear to the casual observer as a collection of leftover hippies from the '60s and '70s—preaching peace, back-to-the-land, and soft energy paths—is actually far more complex than that. And, as is becoming increasingly evident, the movement is quite amenable to arguments for the efficacy of the free market and private property.

An excellent demonstration of this thesis is the "transformation platform" of the recently formed New World Alliance—a coalition of New Age/decentralist groups. Among the many detailed proposals in this document, one finds advocacy of widespread private property ownership, a genuine free market, a sound currency and repeal of legal tender laws, a balanced federal budget, state and federal spending limits, an end to corporate bailouts, an audit of the Federal Reserve System, deregulation of transportation and communications, repeal of barriers to free trade, prohibition of price controls, and replacement of mandatory licensing with voluntary certification. NWA favors a simplification of the tax system and decentralization of welfare. It backs the leasing of public lands to private groups, the phase-out of farm subsidies, full-cost pricing on federal water projects, and a provision for land owners to bring inverse condemnation suits "whenever a police-power regulation destroys more than one-fourth of the value of their land." At the local government level, the platform backs experimenting with Enterprise Zones, privatizing zoning and building codes, and contracting out public services. In education, NWA urges adoption of a voucher system, ending forced busing, and reducing compulsory education to age 14. On health issues, backed are freedom of choice in drug therapies and modes of health care, voluntary certification of health professionals, freedom of elective abortion, and decriminalization of drugs.

To be sure, there are whole sections which seem inconsistent with these principles: a rhetorical commitment to the "new international economic order," the usual call for abandoning nuclear power, and unilateral cutbacks in military programs. Many detailed points still look to

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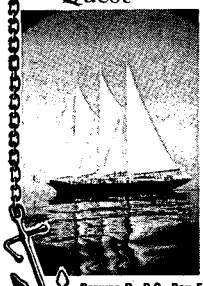

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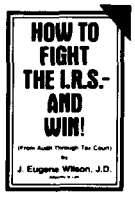

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government to control, direct, and redistribute. Nevertheless, the NWA document is a remarkable demonstration of the extent to which free-market ideas are being accepted throughout our culture.

Deregulating Long-Distance

The trend towards letting competition regulate the telecommunications market instead of bureaucrats continues apace. In December the Federal Communications Commission voted six to one that it has the authority to define common carriers and need not regulate companies which don't have the power to dominate their markets. That policy statement is aimed at allowing the FCC, later this year, to cease regulating the independent firms providing long-distance voice and data service in competition with the Bell System (AT&T) and firms providing domestic satellite service. Only local telephone monopolies and the Bell System's Long Lines Division would remain under FCC control.

The FCC is still trying to deregulate the telex market—messages sent between teletypewriter machines. Last August a federal court said the agency had no authority to allow Western Union into the international telex market, because Section 222 of the Communications Act had permitted WU to buy up its domestic competitors years ago on condition that it steer clear of the international carriers. What the FCC had been trying to do was to substitute competition for regulated monopolies: by letting the international carriers (ITT, RCA, WUI, etc.) into the domestic telex market and letting WU into the international market. The FCC's latest try is to let AT&T into the international telex and telegraph market, while allowing the international carriers to compete with AT&T for overseas phone service, currently a Bell System monopoly. In the meantime, there is "growing sentiment in Congress," according to *Business Week*, for repealing Section 222, thereby letting WU into the international market, too.

All this ferment has already had benefits for consumers. Between July and December, international telex rates dropped by 20 percent.

Space Lasers Urged

One of the most important defense efforts of the 1980s could be the development of space-based laser weapons, able to destroy ICBMs before they re-enter the atmosphere (see "Ending Missile MADness," REASON, January 1979). And according to a conference held last November, such a weapons system could be operational by 1989.

Sponsored by First Albany Corporation, an investment firm, the conference brought together key Defense Department and aerospace personnel with members of the investment community. It reviewed the basic technology of laser and particle-beam weapons, the state of the art, and their projected utility both within and outside the atmosphere. Although air- and ship-defense missions are considered feasible, laser weapons in space would be 10 to 20 times more efficient than in the atmosphere, and could be used over ranges of thousands of kilometers. What's required for a space-based system is a scale-up of present technology, by a factor of 10, according to Pentagon participants. But the pay-off—making Soviet ICBMs obsolete without threatening Soviet lives—is so large that the effort was viewed as worth undertaking.

In December President-elect Reagan was briefed on space-based laser weapons by Sen. Harrison Schmitt, incoming chairman of the Senate Commerce Committee's science, technology, and space subcommittee. According to *Aviation Week*, the Reagan transition team is considering a $500-600 million 1982 program to speed development of such a system—more than doubling current spending.

A dissenting voice has come from MIT physicist Kosta Tsipis. In a study released in December, Tsipis called deployment of space lasers impractical, too expensive, and likely to trigger an all-out nuclear war. Aside from questions of technological feasibility (on which Tsipis seems to be in the minority among scientists), his basic argument seems to be that deployment of such a system would be seen as provocative by the Soviets, leading to an attack on it which could trigger an all-out nuclear war. The same argument, needless to say, could be used against *any* substantial increase in US defense capability.

Licking Stamp Costs

Rep. Barry Goldwater, Jr. (R-Calif.) thought he was proposing a novel idea when he introduced legislation that would allow US businesses to bid for the right to advertise on postage stamps late last year. But way back in July, 1966, the always innovative *Mad* magazine ran a three-page spoof on that very same idea. Sample stamps included soap opera stamps, which would be sold in monthly chapters.

The real-life Free Enterprise Postage Stamp Act, Goldwater claims, is no laughing matter. It would save the US Postal Service $1.2 billion annually through the sale of advertising on all six billion stamps, charging 20 cents per

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stamp. A minimum of one million stamps would be available to each interested company.

There is one ticklish point: Goldwater concedes that a policy board would have to be created to arbitrate on matters of "public taste," as in the acceptability of particular political, religious, or pornographic ads (the latter notion being, of course, highly relative). The proposal has another antecedent: it seems the British government sells advertising space on the booklets its stamps are sold in.

Some stamp collectors are already fighting the proposal. Their main concern doesn't seem to be that noncommercial stamps will become a rarity and hence quite expensive, but that, as International Stamp Collectors Society Executive Director Israel Bick huffed, "His proposal would wipe out stamp collecting as a hobby...one of the last remaining American traditions. Goldwater is a family man. Why would he want to destroy something that has united millions of American families in an enjoyable hobby?" How about because of the USPS's expensive annual deficit?

Incidentally, Goldwater—whose father, Senator Goldwater (R-Ariz.), is sponsoring the bill in the Senate—said he may call on *Mad* artist Al Jaffee, creator of the 1966 spoof stamps, to testify when committee hearings begin on the bill. What, him worry?

Capitalist Comrades

For the time being only, they explain, "to each according to his work" is going to replace "to each according to his need" as the officially acceptable economic slogan in China—and, less explicitly, in Cuba, Laos, and Vietnam too. These four countries, as we have noted in these pages before, are being forced to turn to capitalist tools to achieve their egalitarian ends.

Cuba, which recently allowed private farmers to market their produce (Trends, Nov.) in private markets, has conceded the importance of profitability in determining which state-owned enterprises should survive. Excepting, of course, those unprofitable enterprises which are nevertheless "politically necessary." Workers who indulge in "anti-revolutionary" behavior, such as drinking or goofing off, can now be fired by administrators, and the government may ease away from the rationing system to the price mechanism for alloting goods. These desperate steps may be in preparation for the eventual cutback in the hefty annual subsidy from Russia.

Vietnam has also had to learn to tolerate the return of private merchants in the city of Saigon. The merchants mostly sell goods that have been brought in by the single daily Air France flight. The communist government has found no other way to alleviate the 25 percent unemployment in that city alone. Most of the country is forced to give up electricity one day a week to help fuel the war in Kampuchea (Cambodia), besides having to survive on a radically lowered gasoline ration.

Neighboring Laos has also tolerated free market trading in fresh food and consumer goods—this seems to be the common first concession to the wisdom of capitalism. Communal tilling has lost out to privately-held plots. The communist government says the lapse into capitalist tendencies is merely a temporary measure to help it survive economic stagnation and the refugee labor drain. The Laotian economy is in such bad shape that the government survives largely on foreign aid from Eastern Europe and, aggravatingly, the United Nations. This aid came to about $94 million in 1979.

China is also seesawing up and down on how best to achieve economic progress without giving up too much political power. While the acceptance of the principle of competition seems to be unchanged, a more cautious attitude toward lifting centralized control is evident in the ranks of the Communist Party and the bureaucracy. Some changes, however, will remain: workers can still elect their company officials and in one case can buy shares of stock in the company; enterprises may have to go to banks for loans rather than to the State; and workers' productivity will continue to be rewarded with cash bonuses. As a Chinese economist in Peking explained, "We have about 700 staff members of our State Planning Commission. How can those 700 manage to run the 380,000 enterprises we have in our country?"

How indeed?

AEI Urges Less Regulation

The American Enterprise Institute and its magazine *Regulation* recently sponsored a symposium of regulatory experts to offer "advice to the President-elect." Symposium Chairman Murray Weidenbaum said the panel's suggestion of a one-year moratorium on new government regulations would provide a "breathing spell" during which government regulation of the economy could be slowly reduced. Weidenbaum further called for the abolition of the Regulatory Council created by former President Carter, composed of representatives of 38 regulatory agencies, and recommended getting rid of the Interstate Commerce Commission and the Federal Maritime Commission as well.

The panel also asked for the revision of such "unrealistic" statutory goals as zero water pollution and zero risk in drug marketing. It further proposed that such agencies as the Occupational Health and Safety Administration be required to prove that expected benefits exceed costs before imposing regulations, that a lower minimum wage be provided for teenagers, that auto industry fuel-economy and emission standards be relaxed, and that automobile passive restraint requirements (such as air bags) be revoked.

Out of the Closet: Black Iconoclasts

The election of Ronald Reagan has suddenly made it acceptable to publicly acknowledge a group that most people, at a loss, tend to label "black conservatives." Conservatives and not, what this collection of people have in common is an interest in getting rid of political placebos and in spreading economic independence among blacks via, most agree, the free market.

Among the pet liberal "we're doing this for their own good" projects the group would rather see abolished are rent control, forced busing, the minimum wage, affirmative action, and the welfare incentive "to stay disadvantaged," as Thomas Sowell puts it.

A group of 100 such economists, academicians, and executives recently met at a San Francisco conference on black leadership and problems sponsored by the Institute for Contemporary Studies. A top Reagan advisor, Edwin Meese III, attended the conference, and perhaps he will take back these words by Henry Lucas, a San Francisco professional: "We hope [Reagan] will turn toward these types of people for advice rather than the old-line black leadership."

Reagan might also heed the advice of economic writer Tom Bethell, who, in a recent piece in the *Journal of Socioeconomic Studies* entitled "Real Welfare Reform," argued that fraud and abuse are not the real issues in welfare reform. To decry fraud and abuse, he warns, is to imply that the welfare system itself is fine and dandy and merely needs some stricter controls. Bethell argues that the real wrong in the welfare system is the work disincentive effect it has on people. It is silly to expect people to give up welfare for a low-paying, probably unpleasant job that will pay them a *lower* net income than welfare benefits because of taxes. Bethell also speaks of the demoralizing effect such a system creates, first, by handing over unearned cash to the recipient, and

then, by giving away more money than that person could probably earn, thus removing his personal incentive and feeling of responsibility. A recent "60 Minutes" feature on a semi-private effort to train welfare mothers in skilled and often nontraditional jobs showed the vast difference in self-respect and pride that such work gave the women—the feeling that their efforts mattered.

Because of this, Bethell urges in his study that welfare benefits be lowered, that welfare should not be too "comfortable." We should not index welfare payments for inflation, he writes, because the reduction of fixed-dollar welfare payments through inflation may be the only politically acceptable way to lower benefits. And the worst thing about welfare, Bethell says, "is that it prevents people from getting onto the bottom rungs of the ladder of economic achievement, thus locking them into the welfare system." We all have to start somewhere.

What's Best for Small Business

In 1979, according to columnist Jack Anderson, a Small Business Administration special loan program gave out about $1.1 billion of tax money to 62,000 applicants who had failed to get loans either from conventional or normal SBA sources. And with good reason, it turns out, as the overwhelming majority have failed to keep their SBA-financed projects going.

And now President Ronald Reagan's small-business task force has essentially proposed the removal of all special advantages granted to small businesses by our magnanimous government, arguing that government should be neutral in the competition between small and big businesses. It should instead, the 15-member group headed by Institute for Contemporary Studies chairman H. Monroe Brown urged, allow an atmosphere where both types of businesses can prosper.

Since the new chairman of the Senate Small Business Committee, Senator Weiker (R-Conn.), has said that eliminating the SBA "would be disastrous for small business," it will be interesting to see whom Reagan will choose to listen to.

Private Guards, Private Water

Empirical evidence that private companies can provide cheaper and more efficient services over government has surfaced again.

In Oakland, California, the Army has hired a private security service to guard the Oakland Army Base. Stovall's Security Services Inc. signed a three-year contract that will pay $3.5 million—a savings of almost half the $6.5 million it would have cost the Army to provide the service. Aside from the financial savings, the Army contends, the switch will also allow military personnel to concentrate on combat and Army-related duties. Studies are now underway for a similar change at major Army bases nationwide.

It was accounting chaos, on the other hand, that prompted Washington, DC's city government to hire a Dallas-based firm to untangle its water and sewer billing system. Optimum Services Inc. will be

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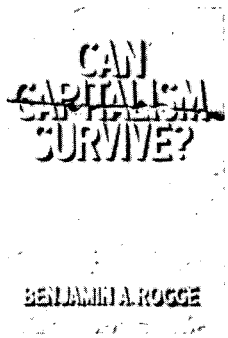

Can Capitalism Survive?

By Benjamin A. Rogge

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paid $243,000 over the next 10 months to bring all bills current and to begin collecting delinquent charges of about $12 million. The root of the problem, says Department of Environmental Services Acting Director William Johnson, is the city's overworked computer system. The private firm's contract specifies that its computer be fully operational 97 percent of the time, or it must pay damages to the city. And if the 10-month experiment works, Johnson foresees an extension of the contract.

Milestones

• *Hope for Housing?* A task force set up by California Governor Jerry Brown has recommended measures that would reduce local red tape on low-priced housing. Delays in the issuance of subdivision permits, for example, would be minimized by reducing the authority of local planning commissions, boards of supervisors, and city councils to intervene.

• *Drug Rulings Conflict.* Hours after a federal district court in Ohio overturned three city ordinances banning drug paraphernalia, a federal district court in New Hampshire upheld a similar city ordinance based on the same Drug Enforcement Administration model. The Ohio court noted that the ordinances fail the "test of precision demanded by the First and 14th Amendments."

• *Second Inheritance Initiative On.* California State Assemblyman Don Rogers's Initiative to Help Ensure the Right to Inherit Without Tax will probably be on California's 1982 ballot, as his group turned in almost twice the number of signatures necessary to qualify. Rogers's measure would go into effect the day after being voted in, while another initiative that has already qualified for the same ballot would make the measure retroactive to January 1, 1981.

• *Sale of Airport Slots Urged.* The Justice Department has advised the Civil Aeronautics Board to auction take-off and landing slots at four congested airports (Kennedy, LaGuardia, O'Hare, and National) rather than continue to allow airlines to allocate them. The Department pointed out that new entry at the National Airport in Washington, DC has been precluded for the past 11 years, to the benefit of a few entrenched insider airlines.

• *Colombia Nays Pot.* A measure that would legalize the growing of marijuana and put its sales under government control has quietly died in Colombia's congress.

• *ARCO Joins Olympic Sponsors.* The Atlantic Richfield Company is the latest to join eight other private firms (Trends, Nov.) in financing the 1984 Olympic Games in Los Angeles. ARCO pledged $9 million to put in a new track and refurbish the Los Angeles Memorial Coliseum and to install six Olympic training tracks at selected schools. A total of about $69 million has been raised thus far in sponsoring revenues, and LA Olympics President Peter V. Ueberroth says he will not accept government financing for the 1984 games.

• *Book-Burning by Taxation!* It's the battlecry of the publishing community, which is protesting an IRS ruling that warehouse stock can not be depreciated unless it is disposed of or its value reduced. The Senate Finance Committee, however, is trying to push through a one-year moratorium granting the book industry an exemption from the ruling for that period at least.

• *Anti-Billboard Law Nixed.* Maine's three-year-old law banning commercial and political roadside billboards has been struck down as a restriction on free speech by a federal appeals court.

• *New Coal Process.* Avco Everett Research Laboratory and the Japanese Ebara Corporation have separately devised a method of removing sulphur and nitrogen oxides from stack gases by using an electron beam. The new process is 40 percent cheaper than current scrubbers, and the easily gleaned byproducts ammonium sulfate or ammonium nitrate can be sold to the fertilizer industry. The two firms have joined up in a venture to sell the product.

• *Draft Registration Klunker.* Judge Gerhard A. Gesell ruled in late November that the Selective Service System's use of Social Security numbers for draft registration violates the Privacy Act of 1974. Those who have already registered can request in writing that their numbers be deleted from their forms.

• *Survey Vetoes Bailouts.* A survey of the chief executive officers of companies listed on the mid-range American Stock Exchange showed that 80 percent of those polled are against government help to financially troubled major or mid-sized firms. Even more (94.5 percent) held that federal assistance should not be given to companies threatened with financial collapse. Meanwhile, federally-assisted Chrysler Corporation refuses to gracefully withdraw from the competition and is asking for an additional $1.3 billion in bailout money from the federal government, the United Auto Workers, banks, and suppliers. Even the *Los Angeles Times* (Dec. 21) ran an editorial advising Chrysler head Lee Iacocca to choose bankruptcy now over bankruptcy later, as did the *Wall Street Journal* (Dec. 11).

• *Nuclear World News.* The United States now ranks only tenth in electric nuclear capacity (9.2 percent of total electric capacity), with Switzerland at 17.5, Taiwan at 16.6, Belgium at 16, Sweden at 14.6, Japan at 12.2, Germany at 12, France, Britain, and Finland at 10 each (figures provided by Dr. Petr Beckmann). Communist China, meanwhile, is negotiating with France for the purchase of two nuclear power plants.

• *Profits Tax Challenged.* The so-called "windfall profits" tax is being challenged in federal court by a coalition of the Independent Petroleum Association of America and 30 groups representing thousands of royalty owners and oil producers on the grounds that the tax is not applied uniformly and that it contravenes the Fifth Amendment.

• *Your Play, Mr. Reagan.* A nationwide survey commissioned by the New York Stock Exchange showed 93 percent of those polled believe that Ronald Reagan should be given a chance to try his economic policies—even those they disagree with—since nothing else has worked. Some 83 percent said they would accept a program that made things difficult in the short run if it could reduce inflation.

• *Biomedical Waste Deregulated.* The Nuclear Regulatory Commission plans to remove the radioactive classification label from certain low-level biomedical wastes and thus help alleviate the radioactive waste disposal problem. The change would reduce the volume of wastes shipped to federally approved burial sites by 50 percent. The NRC further plans to raise the limit of radioactive material that is water-soluble that can be poured down the drain from one to seven curies of radiation per year.

• *More Taxes = Less Work.* J. D. Hausman of the Massachusetts Institute of Technology has produced econometric proof that the progressive tax system has reduced the manhours worked by married men by about eight percent compared to what they would be under a proportional tax system. Hausman's figures end with 1975. Since bracket creep has raised the average man's nominal pay, and since each additional dollar earned is taxed more than the subsequent one, one can expect reduction in manhours to be far worse today.

• *Portuguese Prime Minister Named.* Moderate Francisco Balsemao was named Portugal's new prime minister by recently reelected President Antonio Ramalho Eanes. Balsemao replaces former Prime Minister Francisco Sa Carneiro, who was killed in a plane crash after his reelection. Sa Carneiro had announced before his death that he would resign if Eanes won the presidency (Trends, Jan.).

—Robert Poole, Jr., and Christine Dorffi

"It was like living in a libertarian society; a week of it might just last me till next year."

—Vivian Wadlin
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THE PLOT TO TAKE OVER AMERICA'S RAILROADS

There are powerful bureaucrats in Washington. There are master plans mapping out which railroads will live and die. There are innovators being kept from modernizing rail service. This is the saga of the Federal Railroad Administration.

BY WILLIAM D. BURT

YOU PROBABLY THINK America's railroads are being deregulated. Certainly if you watch TV news, read newsmagazines, or even read in-depth publications like the *Wall Street Journal,* you've heard stories like the following:

- Last August the Interstate Commerce Commission struck down the railroads' collective rate-setting machinery, aiming to increase price competition.
- In September Congress finally passed a long-snarled bill to roll back federal railroad regulation substantially, freeing the railroads to set fares with minimal ICC control. President Carter signed the bill into law in October.
- In December the Reagan transition team on transportation policy urged a speedup of ICC deregulation efforts, an end to subsidies for Conrail, and sale of Conrail's lines to profitable railroads.

Unfortunately, what all these stories leave out of the picture is at least as important as what they convey. Omitted from these reports on the phasing out of conventional regulation by the ICC is the alarming growth of backdoor regulation by the FRA. While free-market forces close up their briefcases and head for home, thinking their job is done, US railroads inch closer to nationalization every month. And orchestrating the slippage is none other than the FRA.

The F-R-*what?* Few people even know that the Federal Railroad Administration exists, much less what it does. Created in the mid-1960s as part of the new Department of Transportation, it inherited jurisdiction over railroad safety from the Interstate Commerce Commission. To its original Office of Safety have been added departments administering regional affairs and an Office of Research and Development (including an Office of Economics and Operations Policy, an Office of Systems Analysis and Information, and an Office of Rail Planning) and the Office of Federal Assistance, this last responsible for $1.6 billion in federal loans and loan guarantees to the railroads.

Today, the FRA has better than 1,600 employees. It's a beehive of activity that threatens to overshadow the ICC as the railroads' major regulatory overseer. Over the past decade, virtually unnoticed outside

the railroad industry, the FRA has produced a master plan for restructuring this country's railroads, stifled innovations that might restore their viability on their own, and extended financial help—in exchange for a rapidly growing ownership stake. Each separate event, by itself, might not be that worthy of note. Taken together, however, they add up to an ominous pattern, one that could radically alter America's principal means of freight transportation.

SAFETY BY THE BOOK

Ringing out the old and bringing in the new doesn't even occur to those who enforce the rules. For nearly two years the Federal Railroad Administration obstructed the introduction of a privately developed rail-highway technology that its promoters claim will require only half the fuel consumed by present-day trailer-on-flatcar "piggyback" trains. Why? Because, an official told me, in effect, "We have to do our job."

"We have sixteen separate sacred cows on rail equipment, you see. Some things the Rail Safety Board can change by regulation, but not those items required by law." Robert Abbott of the FRA's Office of Safety went on to explain what some of these "sacred cows" are: ladders and grab-iron handles located along the sides of freight cars, traditional rail air brakes, and couplers located 34 inches above the rail so that cars rolling together will couple automatically.

The requirements date from the era when the railroads utilized primitive equipment that required switchyard workers to step between cars to make a coupling, leading to numerous injuries and deaths. The Janney Automatic Coupler began to eliminate this hazard shortly after the Civil War, and the Rail Safety Act of 1893, from which today's Federal Railroad Administration derives its authority to govern rail technology in the name of safety, encased turn-of-the-century hardware in the law. As Abbott notes with some pride, the statute has been amended only two times since, in 1903 and 1910.

That is, until FRA foot-dragging forced Bi-Modal Corporation to appeal to Congress last spring to permit the introduction of technology that lay outside FRA's hidebound hardware specifications. How and why the Greenwich, Connecticut-based rail equipment supplier had to obtain

legislation in order to bring innovation to railroading explains a great deal about the political obstacles that still loom before the prospective transportation entrepreneur. They also throw some light upon the strategic power of the FRA itself.

Bi-Modal had begun in 1976 to develop a unique rail-highway freight vehicle to replace current piggyback systems and in the process cut into the number of trucks traveling long distances via highway. Trademarked "RoadRailer," the prototype units came out of the plant in 1978 looking like truck trailers, but with a rail axle tucked up behind the rear highway wheels. An air suspension system on each Road Railer lowered the rail axle and raised the highway axles on the railroad; the nose of each RoadRailer would then be connected to the tail of the one immediately ahead, to make RoadRailer trains.

All this unique innovation, according to Bi-Modal president Robert S. Reebie, would permit an intermodal train that would not need flatcars for trailers and thus would eliminate half the weight, wind resistance, and fuel consumption of the piggyback train. RoadRailers were projected to be upwards of 25 percent cheaper overall compared to piggyback. And safer. They could stop in half the distance of conventional trains and would be more stable on curves and bad track because of their lower center of gravity. And in spite of their unconventional design, yard operations would not require the stepping between or riding on rolling stock that had made the 1893 freight car standards still applicable to modern-day rail equipment.

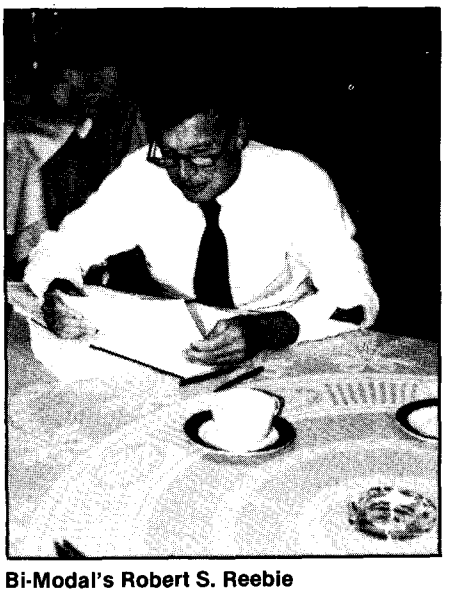
Bi-Modal proceeded to test the prototypes through 1978, and when they successfully withstood stress tests at the Association of American Railroads (AAR) laboratory in Chicago interest became intense. For it seems that the skeptics' first line of defense had been that no one could possibly build a highway trailer that would withstand train service, where the first unit behind the locomotive always has to bear the load of all those behind it.

But build it they did, to the accompaniment of rising consternation among the piggyback flatcar builders and their friends in the FRA. A whispering campaign of sorts began against the RoadRailer but had a hard time keeping up with the units' visible success as they demonstrated high-speed stability and weighed in on the track scales some 30 percent lighter than FRA officials had been predicting. Still, the rumors flew.

Even before this, both Reebie and Alan Cripe, Bi-Modal's engineering vice-president, were well known at the Federal Railroad Administration. As the organizer of the first railroad marketing department (at the New York Central in the 1960s) and the author of several landmark rail-highway freight studies, Reebie had for more than two decades been crusading for radical changes in the way railroads operate. As a consultant writing for the FRA, he had many times crossed swords with agency officials when he insisted on clarifying important, but politically awkward, truths about the need for modernized rail labor practices.

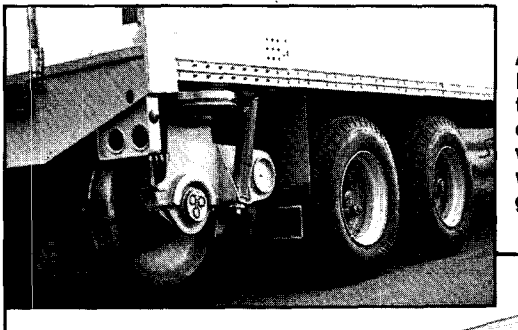
When the AAR and the FRA began advertising that railroads are four times more fuel-efficient than trucks (a shibboleth that persists today), Reebie embarrassed them with a study of West Coast traffic showing that—excluding bulk cargo, such as coal, that cannot be transported by truck at costs anywhere near rail rates—the rails' efficiency advantage over piggyback equipment is marginal and disappears altogether where trains encounter steep grades. In 1978, several such feuds were still simmering in the same corners of the FRA's Office of Freight Systems from which the nation's railroads were apparently obtaining misinformation about the RoadRailer.

Alan Cripe was, if anything, the subject of even more vituperation at the FRA than Reebie. As RoadRailer development neared production readiness in late 1978, Cripe's long-standing differences with the FRA over the importance of aerodynamic resistance in the design of rail equipment heated up anew with the release of FRA test results that empirically confirmed several long-time Cripe predictions.



Modern Railroads/Rail Transit

Bi-Modal's Robert S. Reebie

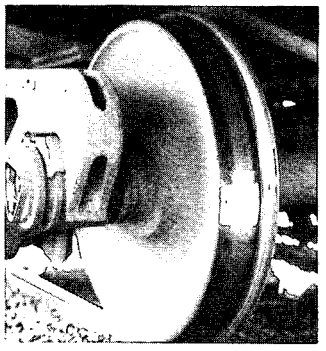


An air suspension system allows RoadRailers to switch from highway to rail wheels. When air bags above one set of wheels are inflated, those wheels drop into place and the other wheels are lifted 7 inches off the ground.

FRA VS. INNOVATION

Thus was the ground laid for Bi-Modal's struggle to get beyond the hardware specifications of the Rail Safety Act. Let them write new standards for RoadRailer equipment if they want, or we will develop our own safety program, said Bi-Modal, but we cannot be bound by requirements that are as foreign to us "as propellers are to a jet." The FRA's reply was simple and to the point: Because RoadRailers did not exist when the Safety Act's requirements were written, we have no authority to permit an exemption. Therefore, RoadRailers will not be allowed to operate.

Catch-22. It was a nice job, answering in this way. No matter that entrepreneurial hopes and dreams and millions of dollars in gained efficiency were at stake. Lack of authority made the refusal seem justified on its face, though government is famous for its ability to redefine or ignore such regulations when its own purposes are suited.



Mehosh E. Dziadzio

For the RoadRailer, FRA foot-dragging has stopped for now, but the hostility toward independent rail innovation remains.

Who could say what vendettas or grudges were gratified by regulating the RoadRailer out of existence? Who could gauge the importance of the fact that many FRA safety officials trace their professional pedigree to the railroad supply industry, an industry dominated by companies that build $50,000 piggyback flatcars, whose technology was being seriously challenged for the first time in decades? Unanswerable questions, and well worth remembering, because the aggressive entrepreneur, so critical to economic growth and prosperity, so often breeds distrust and envy among tradition-bound colleagues—and when these gravitate to the regulatory *apparat,* they gain the upper hand.

The RoadRailer continued testing outside the United States while Bi-Modal turned to Congress for relief. After many months of "selling" their idea to legislators when company officials could have been developing paid customers, Bi-Modal finally obtained the interest and support of Sen. Russell Long, who introduced a rider to an unrelated piece of transport legislation that passed Congress on May 30, 1980. Immediately dubbed "the RoadRailer bill," Reebie's amendment simply permitted the secretary of transportation to exempt a new technology from the Rail Safety Act's requirements, where that technology demonstrates safety in FRA-supervised tests. Political maneuvering to secure the amendment's passage resulted in an addition requiring rail labor's support before new technology can be introduced under the exemption.

The RoadRailer bill was a pure example of what is known in the lingo of regulatory reform as "replacing hardware specs with performance specs." Everybody claims to be against hardware specs because of their inflexibility, and not too long ago Federal Railroad Administrator John M. Sullivan once again professed his agency's commitment to a performance-standard basis of regulation. Yet it took *legislation* to blast the RoadRailer loose from the grip of the FRA bureaucracy, and even now FRA officials receive the newly mandated exemption process with unconcealed ill grace. This businessman, *this promoter,* "dazzled" Russell Long into opening the floodgates to any crackpot inventor who wants to return us to the days when every 10th railroader was killed in service. Or so they grumble.

For the RoadRailer at least, the foot-dragging has stopped for now, but FRA hostility toward independent rail innovation remains. The safety people are comfortable with their 1893 statute, as amended three-quarters of a century ago, and complain, concerning the RoadRailer, that "there's been a lot of compression[?] on this."

THIS LITTLE PIGGY

The Federal Railroad Administration, of course, will tell you that it's not opposed to private innovation per se. Any official will recite the FRA's mission: to do anything it can to promote a safe, prosperous, competitive, energy-efficient railroad system in the private sector. Nothing here that even many free-market Reaganites would disagree with.

There is also an unstated agenda, however. The FRA wants a piece of the action; it wants knowledge and control. Hence it does its own research and development, primarily conducted through and in cooperation with the AAR and usually serving to bestow on that trade association a semigovernmental function of preserving the American railroads as a collective, standardized entity. The unwritten policy works both to "break" mavericks directly and to confront them with federally subsidized competition in R & D.

One example of FRA innovation is the "low-profile" piggyback car that in 1976 was ordered created by Congress. At that time, the FRA was emerging from its initial R & D stance, whereby primary emphasis had been focused upon developing advanced ground-transport systems that it believed private capital would not fund. The energy crisis and the Carter administration's trendy penuriousness wrought a complete shift toward funding projects of immediate application, and the low-profile "pig" car was one result.

That project had been mandated because some piggyback equipment was unable to operate under the overhead wires of the Northeast Corridor's electrified railroad lines, and no piggyback trains of any kind could traverse low tunnels under New York Harbor, the shortest route between the South and New England. In general, there was also great concern that

existing piggyback equipment was seriously overweight. So Congress appropriated $500,000 for the FRA to design and build a lightweight, low-profile car.

As so often happens, the need that had prompted the special legislation had already stimulated considerable private action. The FRA's own previous tests with a stripped-down car operated on the Santa Fe lines had motivated that railroad's engineering department to continue tests on even lighter-weight cars. At least two low-profile designs were under development by newly formed corporations in 1977, and Trailer-Train, the principal lessor of piggyback flatcars to the nation's railroads, soon was testing an improved car of its own. Before long, the RoadRailer, which addressed weight and clearance limitations better than any of the trailer-on-flatcar designs, also was off and running.

Yet the FRA spent about $150,000 and over two years spelling out laborious performance specifications and dithering over various designs for an ideal pig car. Late in 1978, with Santa Fe's car, the Trailer-Train car, and the RoadRailer all in prototype form, the FRA finally got around to holding a bidder's conference with potential builders of *its* low-profile, lightweight car. The reception was, by all accounts, chilly. According to the FRA's Jim Blanchfield, "We concluded that we had a seriously underfunded program here." Other industry sources say that the problem was more nearly that FRA specifications were unrealistic; the car-builders essentially refused to bid on the program. The FRA's Office of Freight Systems finally conceded that it had, in any event, been overtaken by private progress, and the program was quietly retired.

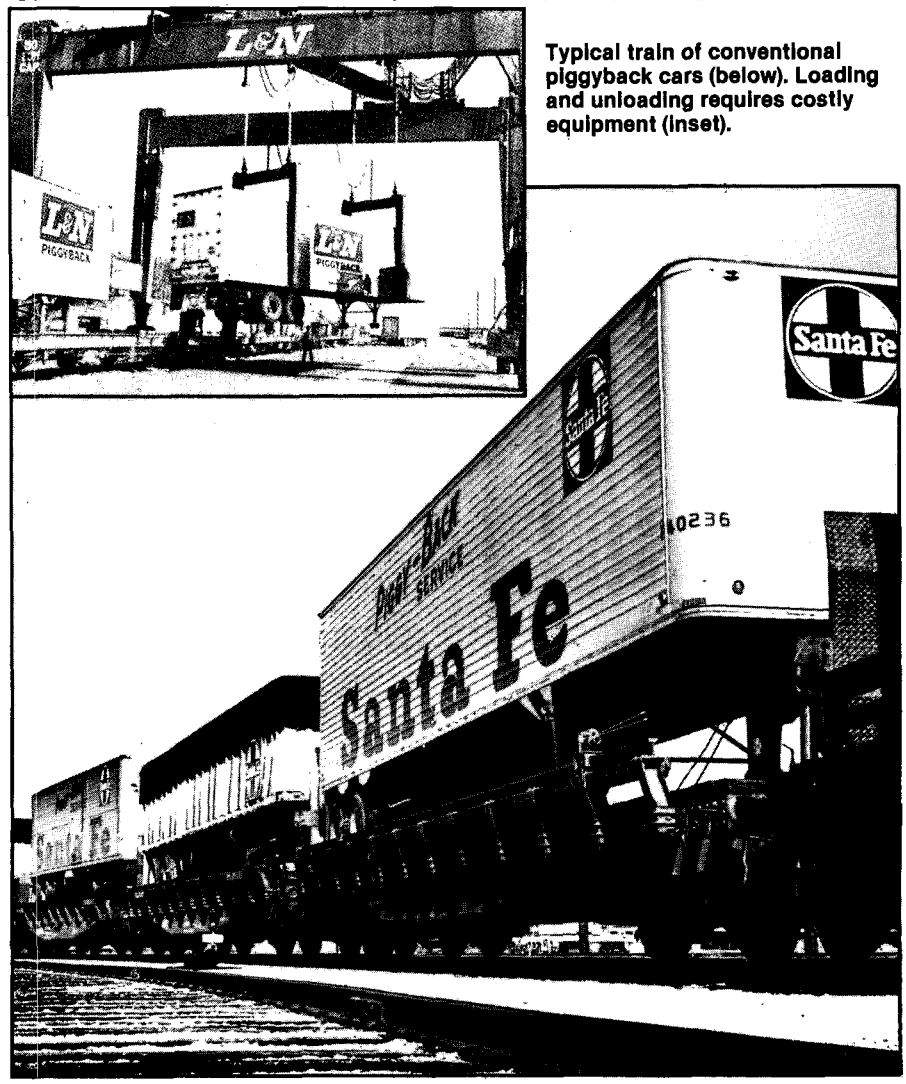
DROPPING THE ROCK

It is not just in technology that railroads are in desperate need of breakthroughs. Current railroad management practices—in everything from marketing to labor relations—often seem bogged down in the 19th century, leaving the railroads less and less able to compete with trucks. Unfortunately, the FRA has shown itself as hostile to independent managerial innovations as it is to technological breakthroughs. The recent dissolution of the Rock Island Railroad is a case in point.

For several years prior to 1979 the Rock Island, in spite of being in bankruptcy, had doggedly pursued development of a new concept of rail operations in lightly-trafficked, rural branchline country, where short local trains operating with two-person crews would essentially roam the territory near their terminals, picking up or delivering loads on call and staying at the shipper's siding until the freight car was free to go back—operating, in a sense, like local truckers always have. Initial tests of the "Farm-Rail" concept produced noticeable service and revenue improvements, but when it was brought to the attention of the Federal Railroad Administration by company president John Ingram, he was informed, as he related recently in *Trains* magazine, that "because of the labor questions involved in the approach it was something the government would not touch." Or perhaps tolerate.

The Rock Island's own unions remained more or less adamantly opposed to giving up old work rules, and as the bankrupt railroad was driven to the wall by the harsh winters of 1977 and 1978, it introduced the Farm-Rail proposals into active negotiation. The unions made counter demands and struck when they did not get them, precipitating a general shutdown of the railroad in the late summer of 1979.

When the strike came, the Rock Island put into effect a contingency plan for operating essential railroad services with management crews. After six weeks, the Rock was moving 30 percent of its prestrike tonnage with 5 percent of the previous on-train personnel, and it projected that by late November it would be moving half its normal freight volume *and earning profits* equivalent to $60

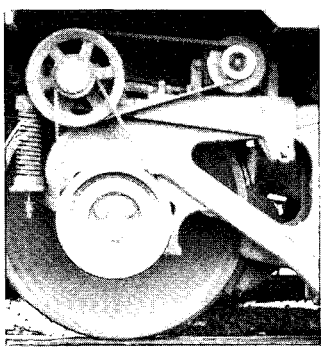


Typical train of conventional piggyback cars (below). Loading and unloading requires costly equipment (inset).

Association of American Railroads

million a year. "The railroad was winning the strike," said Ingram.

Toward late September, federal officials began making belligerent noises about this turn of events. Department of Transportation Secretary Neil Goldschmidt launched an attack upon the Rock Island management, saying that it had "failed to pay wages when due, jeopardized the safety of the public and of railroad employees, and driven service steadily downward." No doubt the DOT's hostility went back to 1975, when then-new president Ingram had resisted liquidation of the company, and Congress had put the strong arm on the DOT to bless the Rock with a loan guarantee. Expressing this hostility, Goldschmidt lamented that "the Rock Island has maintained its corporate identity by running its physical plant and services into the ground." Of course, competitors Milwaukee Road and Chicago & North Western were being lavishly subsidized by FRA money while the Rock went pretty much its own way.



The Rock Island's competitors were being lavishly subsidized by FRA money while the Rock went pretty much its own way.

The ICC was persuaded, however, that the railroad's refusal to settle the strike on union terms was "creating a national emergency," though actually a preliminary agreement had already been reached. Politicians were up in arms about the Rock Island's supposed failure to move the grain harvest, though actually, said the line, it was shipping out grain at record levels. Yet on September 26 the ICC ordered the Rock Island taken over and operated by a consortium of connecting railroads, with the Rock's employees to be put back to work on union terms and losses to be paid for by the US Treasury. The Farm-Rail innovation, and Rock Island's maverick management with it, were consigned to history.

CONTROLLING INTERESTS

As with technology and management, so it goes with finance and the structure of the industry. Long before the word *reindustrialization* came into vogue, the nation's railroads were being used as guinea pigs, mostly willing, in an effort that would see the Federal Railroad Administration become thoroughly involved in mandating the route and traffic structure of major railroad companies.

FRA control stole in via the back door, when Congress began appropriating monies in the early 1970s to shore up faltering railroads in the Northeast. As it has developed, FRA assistance to railroads for track and equipment expenses has begun to display some important side effects.

First, FRA money allows the bureaucracy to brazenly pick winners and losers in the railroads' competitive scramble for traffic and profits. Rock Island again provides an example.

Until the company gave up the ghost, John Ingram had fought for years an apparent conviction within the FRA that the Rock should die while competitors Milwaukee Road and C&NW benefited from federal aid. Since the "theory" behind FRA rehabilitation assistance is that it fills a gap created by the railroads' inability to find private capital, it is instructive to hear Ingram writing on the subject recently in *Trains:* "Where rebuilding could be financed by private funds, they were available in adequate amounts, but where federal funds were the only funds available, they were, for all intents and purposes, not available [to us]....Many applications for financing track rebuilding were filed with the FRA. But with the exception of two small projects little help was obtained from that quarter."

Yet when the Southern Pacific Transportation Company recently petitioned the Interstate Commerce Commission to allow it to purchase and rehabilitate a major segment of the Rock Island lines from New Mexico to Kansas City, competitor Santa Fe complained that the only reason SP could even begin to consider this massive invasion of Santa Fe's home territory was that FRA funds were available to help SP upgrade much of the old Rock Island trackage. (Shortly after purchase, SP received $48.5 million in FRA subsidies for rehabilitation, to be matched by $48.2 million of its own funds.)

Similarly, controversy has been boiling over Chicago & North Western's proposed construction of a 207-mile line into the coal-rich Powder River Basin in Wyoming, a potent competitive thrust against the existing Burlington Northern rail line which will take place only if $230.5 million in FRA subsidy is forthcoming.

Less generally apparent is the quiet effect FRA assistance is having upon rail management practices. Obtaining federal aid for one's lines puts a premium on positive "visibility" and on maximizing sales rather than profitability. To use an example repeatedly observed in railroad marketing practice, it helps to be able to show that one's railroad is experiencing great increases in piggyback traffic, keeping truck trailers off the interstate highways and implementing "national energy policy" by saving fuel at the ostensible rate of four-to-one over highway. No matter that you acquire this traffic volume by pricing it below cost—volume, not profit, is what matters when pleading one's significance to the FRA. At a juncture when railroads need to know their costs so as to accurately compare innovation against current operating practices, the thrust of FRA assistance discourages sound costing and management.

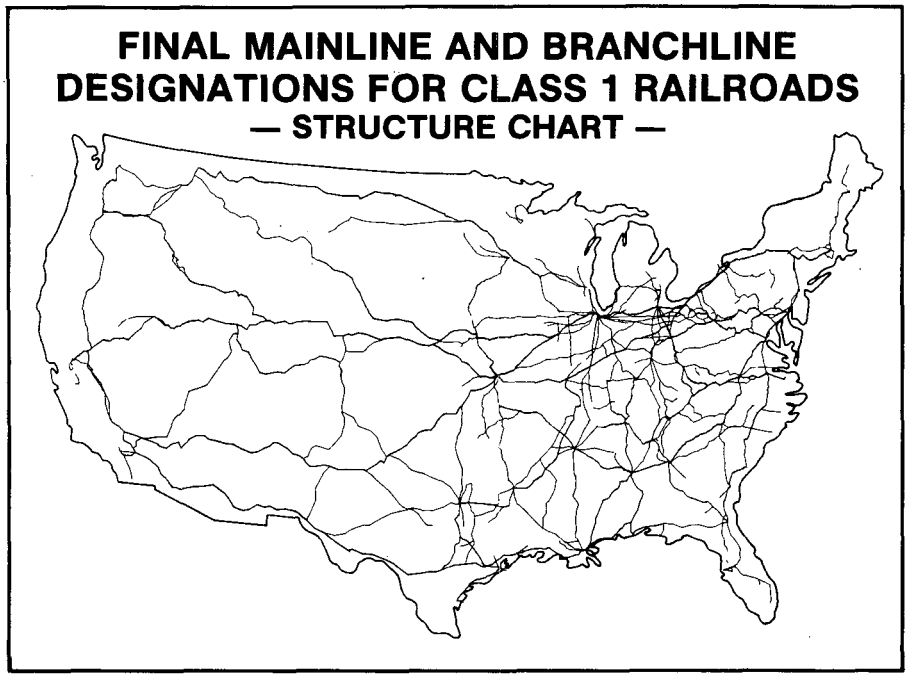
As time goes on, the pressure for greater "control" over federal spending is leading the FRA to adopt an increasingly activist stance in setting terms and conditions for its giveaways. What began in 1970 as an essentially strings-free loan of $100

million to the Penn Central has grown over the last decade to a *$12 billion* federal stake in American railroading. While it is extremely difficult to get an accurate handle on all the kinds of aid that today's railroads receive from government, *Trains* magazine columnist Don Phillips recently did some back-of-the-envelope calculations that suggest the radical intervention represented by the FRA's "backdoor" financing. Not only has there been $6.5 billion for Amtrak and another $3.1 billion for Conrail disbursed from the US Treasury; the Federal Railroad Administration has administered the following aid to supposedly private railroads: $505.1 million in direct grants or forgiven loans, $483.2 million in direct loans, $375.7 million in outstanding loan guarantees, and, most alarming, $308.8 million in federal government purchases of railroad trustee certificates or preference shares, redeemable over 30 years at 2 percent interest with the first payments not generally due until the 11th year.

These last are essentially *direct grants that convey large ownership interests in US railroads to the federal government.* Examples of current and future approved outlays under the preference shares program are: $166.4 million to the Illinois Central Gulf Railroad for rehabilitating its main lines between Chicago and New Orleans; $147.5 million to a regular supplicant, the Chicago & North Western, for track upgrading; and $33.8 million to the bankrupt Milwaukee Road for similar work. In all, the program takes in eight railroads scattered throughout the East and Midwest.

What all this will come to is anybody's guess. During the 1930s and '40s, the rails dipped deeply into the federal trough via the Depression-era Reconstruction Finance Corporation, and those loans were mostly paid back without Uncle Sam assuming any lasting control. It is wrong to assume, however, as historians often do, that RFC assistance and massive government railroad rebuilding work during those decades was without lasting economic effect. The case can certainly be made that this aid fostered an illusion of rail prosperity in the early 1950s that impelled many companies, notably the northeastern railroads, to plunge even more deeply into debt. The resulting fixed-cost burdens had much to do with the wave of bankruptcies experienced in the early 1970s. (The decade of the '80s will see even more long-term railroad debt coming due.)

More worrisome in the short term is the reindustrialization-style pressure propelling the Federal Railroad Administration to strong-arm the nation's railroads into a federally mandated plan for restructuring the current companies into fewer, larger systems. Such plans have been on the drawing boards for a decade and may go a long way toward explaining why the FRA has lavished rehabilitation grants on the railroads it has. A recent General Accounting Office report, however, urges the FRA to abandon aid for rehabilitation and focus strictly upon encouraging suitable marriages between railroads, using taxpayer dollars as the dowry. To which the FRA has replied that, as a practical matter, one cannot separate the aid for rehabilitation and the FRA's power to compel industry compliance with the agency's restructuring goals. Precisely so.



The FRA's master plan for "A Mainlines" in a restructured rail system, dated Jan. 19, 1977. (Data source: FRA Network Planning Information System)

THE GREAT CON

Given that the entire history of rail regulation can be loosely described as a series of attempts to shore up inefficient routes and corporate structures, the difference between a federally brokered restructuring and a true market rationalizing of the nation's rail system takes on significant dimensions, for both rail investors and consumers. Which way the FRA would like to go—and how far—is pointedly clear in its stance toward Conrail, the federally subsidized northeastern rail giant created in 1976 to replace the Penn Central and six other bankrupt railroads.

Conrail represents a frustration and an opportunity to the FRA. When Congress took control of the bankrupts' reorganization in 1973, it pointedly avoided delegating authority for control to the FRA, on the premise that the appearance of nationalization must be avoided at all costs. Instead, the United States Railway Association was chartered as a quasi-public corporation and given the charge of designing and overseeing the reorganization of what eventually became Conrail. The USRA, relative to the FRA, continues to enjoy strong support from the Conrail constituency, and, according to *Traffic World,* the FRA attitude toward the USRA has consequently been one of unalloyed "resentment." Interagency relationships have been icy and much

duplication of effort exists, though this in itself is not unusual in transportation regulation (see adjoining list of pertinent regulatory authorities).

But for those who aspire to become brokers in the game of redrawing the nation's rail map, Conrail, with its complete access to all important eastern markets, represents the biggest plum there is. Consequently, in February and March 1980, the FRA mounted an all-out effort to disband the USRA and absorb its functions, thus seizing control of Conrail.

The bureaucratic scrap began with a minor amendment slipped into the Amtrak Restructuring Act of 1979, calling for the USRA, the FRA, and the Department of Justice to study the feasibility of transferring USRA activities to the other two agencies. (Justice would be involved to the extent of litigating the claims still outstanding as a result of the conveyance of the bankrupt railroads to Conrail, lawsuits that are still mostly pending.) The amendment was the work of a disgruntled USRA employee, an official of the Department of Transportation, and a key congressional aide, according to *Traffic World*.

To no one's surprise, the Department of Justice wanted nothing to do with Conrail litigation that was already well along, and said so in a report last March. The joint USRA/FRA report due at that time, however, did not appear because the agencies could not agree on language suitable to both.

The bone of contention was the USRA's phase-out, not any serious disagreement over issues. In a joint FRA/USRA staff report published in late 1979, the agencies had already spelled out an approach to Conrail restructuring that can only be described as modern-day political robber baron-ism. A free-market disposition of Conrail's lines was not to be allowed. Instead,

> *The planning and management of any controlled transfer should be undertaken by a public agency that is responsible for fulfilling the following three primary functions:*
> • *Design of packages—that is, the combinations of Conrail key and light density lines—to be acquired by other railroads.*
> • *Solicitation of interest for potential transfers and structuring of the conveyance process.*
> • *Control of the conveyance process to assure satisfactory results.*
>
> *By establishing competitive regional balances and ensuring the continuation of essential services, the packages would be designed to assure that the transfers would be in the public interest. . . . The form of the restructured system would be decided in large part by the determination of which carriers would be eligible to participate. Were participation extended to all solvent carriers in the Western, Southern, and Eastern Districts, the result could be a restructured national rail system.*

RAIL DEREGULATION? NOT YET!

Recent regulatory reform legislation passed by Congress has led many to believe that railroads are now deregulated. Not so, as the following list of railroading's regulators demonstrates.

Federal Railroad Administration (Department of Transportation) administers the federal laws regulating safety on the railroads, administers federal assistance, and has authority to propose transfers of property or rail service supplemental to the transfers of rail properties that created Conrail.

United States Railway Association provides funds to, and monitors the performance of, Conrail and can propose supplemental transactions involving Conrail.

Coast Guard (DOT) regulates railroad bridges across navigable waters of the United States.

Interstate Commerce Commission regulates the certification, rates, purchases, mergers, consolidations, and acquisitions of control, discontinuance of service, and abandonments of railroads.

Department of Labor enforces Executive Order 11246, which prohibits government contractors from discriminating against employees or applicants for employment because of race, color, religion, sex, or national origin. In addition, DOL has authority to regulate working conditions that affect railroad employees.

National Mediation Board and *National Railroad Adjustment Board* mediate labor disputes between railroads and unions.

Railroad Retirement Board administers federal retirement-survivor and unemployment-sickness benefit programs.

Environmental Protection Agency issues regulations to control and abate pollution by the railroads in the areas of air, water, solid waste, noise, and toxic substances.

Securities and Exchange Commission requires the filing of periodic financial statements by railroads registered under the Securities and Exchange Act of 1934.

Federal Communications Commission administers the regulation of radio broadcast by the railroads.

Nuclear Regulatory Commission regulates the containers used to ship nuclear materials.

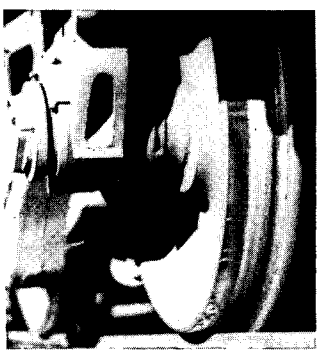
Department of Health and Human Services has proposed age and handicap discrimination regulations applicable to railroads participating in federally assisted programs and regulates waste disposal on trains (except Amtrak).

National Transportation Safety Board investigates railroad accidents and makes recommendations to government agencies, the railroad industry, and others on safety measures and practices.

(Adapted from Department of Transportation, *ABC's of Railroading*, May 1979.)

The upshot of the agencies' 1980 struggle for control over this process was that the USRA won, meaning that it got Conrail for a sandbox while the FRA got the rest of the rail industry. But USRA's victory proved to be short-lived. As this issue was going to press in January, DOT took over ownership of Conrail's stock (which had been expected to go to USRA upon settlement of creditors' claims, for $2.1 billion). In effect, Conrail has just been nationalized. What DOT intends to do with its ownership remains to be seen.

Whatever the eventual outcome, the stakes are high. Even FRA-style restructuring advocates such as former Penn Central trustee Jervis Langdon remember that in 1972, when PC sought to bail itself out by putting portions of the railroad on the auction block, several western railroads actively bid on segments of Penn Central and thus exposed their strong interest in maintaining good rail connections to eastern markets. That was before the federal government, at the instigation of the Union Pacific Railroad, stepped in with its Conrail "solution" guaranteeing eastern access at taxpayer expense. Now that Conrail has been nationalized, the key question will be whether DOT intends to sell off its key properties—or to make Conrail the cornerstone of FRA's national(ized) rail system.



What began as a strings-free loan of $100 million to Penn Central has grown to a $12 billion federal stake in American railroading.

LIFE WITHOUT THE FRA

Whatever happened to the Federal Railroad Administration as, on the conventional view, a relatively harmless surrogate for the support institutions that the railroads could (and would, in a free market) provide for themselves? The evidence is that the FRA long ago went beyond the functions that rationalized its existence: serving as a fount of research and development and an easy mechanism for providing centralized enforcement of standard, universal safety regulations.

The conventional view of the FRA as a harmless support institution just doesn't match the facts. The FRA has worked aggressively, at several levels, to assume control over the substance and functioning of American railroads. With its ideal system map as a blueprint, the agency has bestowed federal subsidies upon its chosen "winners," leaving the "losers" to struggle and die. Moreover, it has actively worked to thwart innovations, both managerial (Farm-Rail) and technological (RoadRailer), that the private sector has developed—and that hold the promise of revitalizing railroads *without* government subsidies.

Of course, if railroads can return to health without federal aid, the FRA will be left without its principal lever for compelling restructuring in accordance with its master plan. Thus, the FRA's actions are quite understandable—and quite consistent with its drive to achieve control of the industry.

The question, then, is not whether the FRA's research, safety standards, and subsidies are "worth the price" in increased control—for it is clear that, unless checked soon, that control will become near total. The real question is whether there is any justification for an FRA *at all,* even for research and safety standards.

In the area of research, the lesson of the FRA's attempt in the late '70s to build an ideal pig car should not be ignored. When the railroads require new technology, they and their suppliers are perfectly capable of meeting the challenge. In fact, their efforts are far superior to those of the FRA.

And in the area of safety and efficiency standards, an alternative already exists—the Association of American Railroads. Long before life was breathed into the FRA, the AAR and its predecessors were developing standards that would permit the interchange of cars among all of the nation's railroads. Entirely on its own, without any help from government, the railroad industry developed and put into use a standard track gauge (a distance between rails of 4 feet, 8½ inches), a standard automatic coupler design, a standard air brake system, and even the nationwide system of standardized time zones.

The alternative to the FRA is simply to let the AAR resume its historic role and become fully responsible for developing safety rules and standards and encouraging and funding R & D. Neither the public nor rail employees are directly protected from unsafe conditions by the FRA, anyway. Railroads have to pay fines *to the FRA* for safety-rule violations, but innocent bystanders and railroad workers must turn to the courts for recourse. The best way to secure public safety is to have self-insured railroads that understand their full liability for the consequences of any accidents.

Thus, the most basic rationales for the existence of a Federal Railroad Administration have no foundation in the facts. We do not need an FRA to develop rail technology or promote rail safety. What the railroads *do* need is an extension of deregulation beyond the fainthearted reforms made recently at the Interstate Commerce Commission, an extension that will eliminate the FRA and other political interests that presume to dictate management and consumer choices and that thereby forestall the rail renaissance that has been predicted for the last 20 years but somehow always remained around the corner. ◻

William D. Burt has an M.S. in transportation planning and management. He has worked as a congressional staffer and for political organizations. Since completing this piece, he has joined Bi-Modal Corporation.

Your Federal Tax Dollars at Work

CONCEALED COSTS/ BLOATED BENEFITS

By John Semmens

In fiscal 1981, the Federal Railroad Administration will waste $90 million in taxpayers' funds on Local Rail Service Assistance projects. This waste will occur despite the requirement that the costs and benefits of a subsidy plan be toted up—with a plus on the bottom line—before funding can be awarded.

How could this be? With cost/benefit analyses, we are supposed to get the best of all possible worlds: waste will be unmasked; only efficient and productive government programs will be supported, marking a leap forward from the old, political ways of deciding how to disburse the public kitty. But this picture is more wishful thinking than anything else. While the cost/benefit approach has some attractive attributes in theory, the existing evidence shows that *in practice* this analytical tool is abused for the purpose of providing so-called economic justification for the same old government boondoggles.

And think of it—the FRA is only one, relatively obscure, government agency. A hard look at its assistance projects shows how it's done, but it's happening all across the vast spectrum of government largess.

To understand how cost/benefit studies go wrong, you have to understand why they're necessary in the first place. The marketplace, of course, employs something like them, even if the process is not formalized. If the benefits of whatever a firm is producing, as approximated by sales revenues, do not exceed the costs of producing it, the firm will earn nothing for its investors, and those investors will take their funds elsewhere—to some firm that *is* producing something consumers value highly enough to cover the costs of production, including a return on the investment.

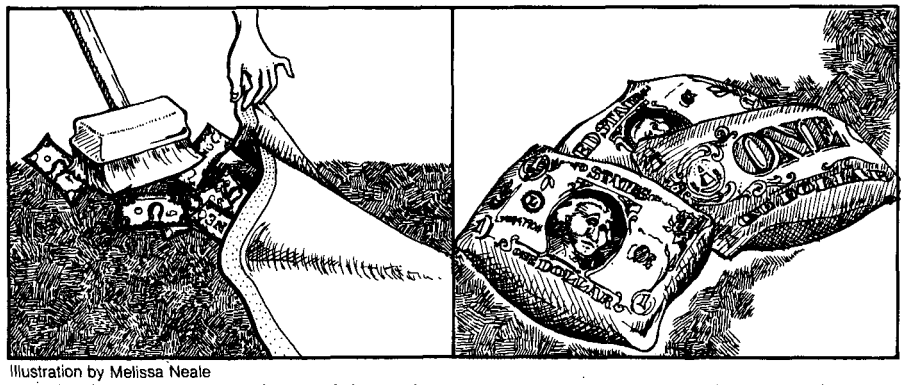


Illustration by Melissa Neale

The users of government-provided goods and services, however, are not generally required to pay their full cost, and those who must ultimately make up the deficits—the taxpayers—are not given the choice of declining to pay. So the typical government product lacks the fairly clear signals provided by ordinary market transactions concerning the benefits of that product. "Not to worry," say the advocates of government cost/benefit analysis. "Our studies will allow us to estimate the answers that would be given by the market if a market for the product were permitted to exist."

The first problem with this is the task of estimating the benefits enjoyed is, at best, prone to measurement errors. After all, individuals vary enormously in the value they attach to things. The marketplace itself only gives an approximation of the *minimum* value of a product or service at a given point in time. Many purchasers might have been willing to pay more than the going price if they had to. Take away the marketplace, as the government typically does in embarking upon its operations, and we have even less basis for estimating values.

BEEFING UP THE BENEFITS

Beyond the difficulty of the task, however, is the fact that, as presently constituted, *all* government cost/benefit analyses *systematically* overstate the benefits and understate the costs of government spending. This systematic bias is accomplished by loading up the benefit side of the equation with all manner of gains over and above those directly concerned with

the proposed spending. At the same time, these types of side effects are studiously ignored when it comes time to consider the costs of the government activity.

One way to load the benefit side of the equation is to transform some of the costs of the proposed program into an increment to the benefits. In the railroad subsidy program, for example, a typical cost/benefit technique is to count the wages paid and the inputs purchased as additions to the value of the service performed. In any reasonable approach to evaluating the viability of investments, such expenses are part of the stream of cash outflow necessary to produce a product or service. Surely it is a good thing that people will be employed and suppliers kept in business. But that *costs,* and by putting these into the benefits column, any project can be made to look good. Furthermore, this approach is an open invitation to a skillful petitioner for government funds to pump up the amount of benefits by incurring outrageous expenses for labor and supplies.

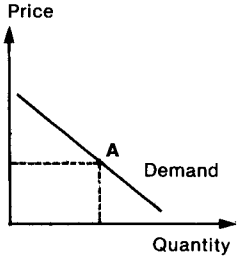
This inflation-of-benefits technique can be taken even further, as it is in the FRA guidelines, by factoring in secondary wage and employment losses that can be forestalled by rail subsidy. As such, the FRA methodology can show the "need" to subsidize a losing rail line in order to continue service to an unprofitable shipper, because the shipper's shut-down would eliminate jobs.

To place the methodology in perspective, suppose that Chrysler were located on the rail line under review. The monumental losses achieved by Chrysler would constitute a source of *benefit* streams that could be used to justify federal subsidy. The expenses Chrysler would incur in keeping its plant open would be summed into the benefit portion of the ratio. The less efficient the rail user's operation or the less its product is desired by consumers, the more it has to spend in order to keep the plant open, and hence the larger the benefit/cost ratio will be.

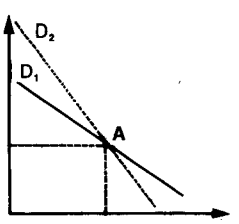
Another virtually unbounded element of value that can be used to pad the benefit portion of the analysis is the so-called consumer surplus that exists in the consumption of any product or service. To understand the concept of consumer surplus, imagine yourself an economist. If you were such a creature, you would illustrate the point by drawing a graph plotting the two relevant variables—price and quantity. With price on the vertical axis and quantity on the horizontal, you would draw in a hypothetical demand "curve," sloping downward from left to right to show that, the lower the price of a product, the greater the quantity bought.

THE CONSUMER SURPLUS PLOY

Now, suppose that in the picture you have drawn, A is the price/quantity arrived at in the market, given the cost of producing various quantities (we won't mess up our picture with a supply curve). Price × quantity, of course, equals the total amount paid out by consumers for this product, represented graphically by the shaded area. This is the market's "calculation" of the minimum value of this product to consumers—*minimum,* because some people value it highly enough to pay more if they had to. How much more, in toto, is represented by the triangle lying above the area of actual sales. And that is the famous "consumer surplus."



Government cost/benefit analysts, naturally enough, like to count that surplus among the benefits of their projects. The trouble is, however, that they don't know what the demand curve looks like in the real world. And by playing around with the curve, you can see what a difference it makes. If you assume that demand looks like D_2, rather than D_1, you will come up with a much larger consumer surplus.



The FRA's suggestions for estimating this curve are ludicrous. One idea is to assume that *all* rail shipments would be replaced by truck hauling if the rail line were to close. This was the premise of a cost/benefit study done for a project in Texas, for example. But since, in the nature of things, it costs more to transport some commodities by truck than by rail, this amounts to an assumption that the quantity of transportation service demanded is totally unaffected by its price. Even though such an assumption is quite clearly absurd, it was labeled "conservative," on the grounds that the FRA guidelines would've permitted even more ridiculous assumptions.

A second FRA suggestion for estimating the consumer surplus is to ask shippers what price they would be willing to pay for rail service and to use this to calculate the amount of consumer surplus. There's nothing like the real marketplace for getting people to put their money where their mouths are. The problems with this approach to estimation can be seen in this example: Patrons of an emergency flood train service in Arizona avowed a great willingness to pay several times the $1.00 fare for continued rail passenger service. A consumer surplus figure based on this data would have amounted to $5 to $10 million per year. The fly in the ointment was that when the flood-damaged freeway bridge was repaired, train ridership *at the $1.00 fare* dropped by 80 percent.

The whole consumer surplus ploy is but a means of inflating the apparent benefits of rail subsidies. The surplus cannot be measured by any known methods. The FRA's proposals merely place the stamp of official approval on estimation techniques that are certain to result in gross distortions and unconscionable overestimates of the benefits of the subsidy program.

OVERESTIMATED SAVINGS

A third tool for inflating the apparent benefits of government spending is to incorporate what are obviously mere transfer payments as if they were net gains to society. The local recipients of federal grants are permitted and encouraged to hypothesize dislocation costs that would be experienced by local businesses if the proposed government subsidization of rail service were not forthcoming.

This procedure inverts the typical cause-and-effect relationship. Local rail lines that once were bustling with activity, but now are failing, are failing because the underlying economic rationale for business activity at the

locations being served is changing. This is especially the case where rail lines were originally built to service mining industries. As the economy's needs change over time, the type of transportation required changes. Put another way, declining industries lead to declining rail lines, not the reverse. Yet the assumption of this cost/benefit technique is that the declining economic viability of rail-using industries can be reversed by subsidizing rail service.

The benefit side of the equation is loaded up with indirect gains, but side effects are studiously ignored when it comes time to consider the costs.

Beyond this mix-up between cause and effect, though, are the erroneous notions of the savings to be garnered for the nation by preserving rail service. If a firm cannot pay the full cost of transporting its product to market, it should close down. The economy is best served by such a closure. One would not know this from examining FRA guidelines on calculating the social benefits and costs of business shut-downs and relocations. Losses in local land values due to plant shutdowns in dying towns can amount to enormous sums—all of which can be computed as benefits if the losses are prevented by subsidizing rail service. The potential consequence is that, again, virtually any rail subsidy can be made to look beneficial.

The problem, from a public-interest perspective, with all of these devices used to inflate the prospective benefits of government spending is that their one-sidedness distorts the analyses, leads to the misallocation of resources, and actually reduces the general welfare. The dislocation factor, for example, focuses solely on the perceived benefits of a *specific project*. Unmentioned are the dislocations that will result in areas that must forgo the use of those resources. Within the context of the government's own programs, the funding of some projects means that some other potential projects cannot receive funding. The unfunded projects will suffer the dislocating consequences of not being chosen for subsidy. At most, the benefit of forestalling dislocation is the increment of the chosen over the rejected alternatives in terms of dislocation costs that can be prevented.

FRA funding of a project for Apache Railway in Arizona shows one of the results of such techniques—providing a new avenue for private businesses elbowing their way to the public trough. Apache was fully capable of financing its own capital investment project. Its parent corporation—Southwest Forest Industries, a major paper producer with annual revenues in excess of $750 million—was investing $50 million in the purchase of a manufacturing facility in another state at the same time as it was asking for $600,000 in taxpayers' money for a railroad construction grant.

For the railroad, it was a question of the money being there for the taking. For the state of Arizona, it was a case of grabbing the money or losing it to another state. For the FRA, it was a matter of using up its budgeted funds, even though the project did not fit its notion of the proper use of federal funds, in that the rail line in question was in no danger of failure. This latter fact is the sole positive element in the whole sordid affair. At least the investment made sense from a return-on-capital perspective (the return was projected at 24 percent per annum).

COST COVER-UPS

Beyond the confines of the government's own programs is the inherently disruptive impact of income transfers. The cost/benefit methodology does not acknowledge the effects that taxation of productive enterprise for the purpose of subsidizing deficit enterprises has on the national income. There is no getting around it: taxing activities with positive returns in order to fund activities with negative returns on investment reduces the national wealth. This consequence has widespread implications for both present and future employment and standards of living. Yet it is completely ignored in the government's cost/benefit analyses.

Absurd as it may appear, it is standard operating procedure for government cost/benefit studies to be conducted as if government spending alone produces benefits beyond those measured by the transactions themselves. The fact of the matter is that *all* economic activity has indirect effects on the community. *All* economic activity produces consumer surplus. These indirect benefits and consumer surpluses are not generally accommodated in private investment analysis because, in addition to their being unmeasurable, they are unbankable. They are also largely offsetting. To consider these factors as part of the benefits without also taking cognizance of them in the estimation of costs produces the systematically biased results that serve as some sort of pseudo-rational justification for ever-increasing spending.

The classic capstone to the whole rigged process of government cost/benefit analyses is the estimate of the cost of capital.

The classic capstone to the whole rigged process of government cost/benefit analyses is the estimate of the cost of capital. In the business world, a firm must base its investment decisions on its cost of capital. Projects which cannot generate a sufficient cash flow to cover this cost are financially infeasible. And so cost/benefit analysts in government dutifully put this cost on their balance sheets. But how they estimate it!

While there is some room for reasonable disagreement over what a representative cost of capital might be in any given instance, there is no question that the methodology endorsed by the FRA, for example, is seriously deficient. Employing this methodology, the state of Texas was able to make the asinine announcement that four percent is a representative cost of capital. The use of such an absurdly low cost of capital will, of course, inflate the net benefits of the subsidy program by substantial amounts.

The rationale for the selection of such a low cost of capital is that, since the project is government-financed, it

is risk free! It is true that, since the government possesses a virtually unlimited power to levy taxes in order to pay its debts, it can borrow at the lowest rates and its debt instruments are considered safe from default (and therefore "risk-free"). To use these low interest rates, however, as the cost of capital for government investment is to introduce a major distortion into the analysis.

When one is constrained to consider the total impacts of a subsidy program, the general welfare will always show negative returns.

Since the whole concept of the cost/benefit analyses is that the benefits and costs can be calculated in order to determine whether the project is justifiable, the relevant measure of risk is *not* the ability of the government through its taxing power to make up any deficits. The relevant measure of risk is the probability that the anticipated benefits will in fact equal or exceed the benefits that could have been obtained from an alternate use of the resources. In short, the cost of capital is the opportunity cost of converting liquid assets into specific fixed investments.

The fact that the government may be able to borrow money at low, "risk-free" rates is fundamentally irrelevant as a consideration in a cost/benefit analysis. Since government spending diverts resources from private investment, the relevant opportunity cost for the FRA, for example, is at least the return that could have been obtained from an average investment at average risk, *plus* an allowance for the additional risk inherent in attempting to revive an unprofitable branch line and an increment to allow for the sacrificed indirect benefits and consumer surplus forgone as a result of this diversion. That is, in contrast to the usual procedure of using a *lower* cost of capital for government projects, a true social welfare-maximizing methodology would require a *higher* cost of capital for such projects.

ARTFUL MANIPULATION

The general welfare, however, turns out not to be the constraint one might have thought, given all the virtues laid at the feet of cost/benefit analysis. Take the FRA's handbook, *Benefit-Cost Guidelines: Rail Branch Line Continuation Assistance Program,* put out in January 1980. With a universe of possible examples with which to illustrate its methodology, the FRA came up with negative returns. It is no accident, of course, that the numbers came out this way. When one is constrained to consider the total impacts of any subsidy program, the general welfare will always show negative returns.

A neat way around this problem is simply not to require a project to show positive (national) returns in order to be eligible for subsidy. An applicant for FRA funding, for example, is free to establish whatever "frame of reference" seems convenient. In the *Benefit-Cost Guidelines* manual, the option that showed the largest net social loss on the basis of the national "frame of reference" could be manipulated—and was manipulated—to show a net gain of nearly $6 million from a local perspective. In this way, an applicant for federal funding can make a project that in reality loses nearly 80 percent of the original investment appear to generate a sixfold return on investment.

As should be evident by now, the standard government approach to cost/benefit analyses is fatally flawed. It stacks the deck against rational allocation of resources. The implied rigor of economic evaluation through government-generated cost/benefit analyses is an illusion. Whether the entire process is an elaborate hoax or an exercise in self-delusion is not easily discernible from the utterances of the proponents of this miracle tool.

The resort to such devices as the cost/benefit analysis is stimulated by the determination to reject the marketplace as an arbiter of the material desires of mankind. At best, if honestly performed, the technique is inferior to the marketplace as a means of allocating resources among competing needs. At its worst, it is a sophisticated tool for propagandizing on behalf of nonexistent net benefits of public spending. In the hands of an artful manipulator of numbers, the most preposterous schemes to waste the taxpayers' money can be made to appear veritable gold mines of opportunity to enhance the public interest. The timely demolition of this bureaucratically concocted ruse could do much to promote both the rights of taxpayers and the general welfare. ◻

John Semmens is working as an economist for the Arizona Department of Transportation, while completing his master's in business administration at Arizona State University.

A CALL FOR APPLICATIONS . . .

"Paternalism, the Welfare State, and Individual Responsibility" is the theme of the Reason Foundation's 1981 summer research seminar, an in-residence (in beautiful Santa Barbara) program starting the week of June 14 and ending on August 22. Scholars whose current research and writing fit within the theme, and who are interested in interdisciplinary exchange, are invited to apply for participation.

The seminar is conducted by the Reason Foundation for the Liberty Fund, which is offering stipends of $3,000 - $5,000, depending on academic rank, for participation in the 10-week program. Participants will also be reimbursed for the cost of round-trip coach air fares or for travel by car at 20¢ per mile, whichever is less.

Applicants should submit a detailed description of the work in which they are engaged, indicating how it will contribute to the seminar and may be of value to scholars in other disciplines. Applicants should also send an up-to-date vita and copies of relevant publications. Send applications, by March 31, to

Tibor R. Machan
Educational Programs Director
The Reason Foundation
1129 State Street, Suite 4
Santa Barbara, CA 93101

SOME THOUGHTS FOR THE NEW PRESIDENT

RONALD REAGAN is commonly identified as a conservative. Certainly the "New Right" and the Moral Majority, which are as conservative as one can get in American politics without shame and embarrassment, claim him as their politician. Yet even aside from that, it's pretty much understood that Ronald Reagan is of the conservative wing of the Republican Party, as against Gerald Ford of the center and Jacob Javits, who leans toward the left and could easily trade places with Daniel Patrick Moynihan, the Nixon-Democrat from New York State.

In his July 1975 *Reason* interview, Mr. Reagan said, "If you analyze it, I believe the very heart and soul of conservatism is libertarianism." He added in clarification that "the basis of conservatism is a desire for less government interference or less centralized authority or more individual freedom, and this is a pretty general description also of what libertarianism is." Mr. Reagan here gave voice to an impression shared by many Americans throughout the past decade or so, when libertarian political ideas have begun to attain a measure of visibility. The impression has a degree of validity, of course.

BY TIBOR R. MACHAN

American, as distinct from European, conservatism aims at retaining the ideals associated with the American Revolution. Some debate still lingers on about just what *are* the essential ideals of that major political event, and this is no negligible matter. For instance, neo-conservative Irving Kristol has maintained, with many others, that the revolution was no radical break with the past and should not be viewed as an expression of Thomas Paine's, George Mason's, and Thomas Jefferson's radicalism. Instead, they hold that Madison and Hamilton express the true spirit of the American Revolution. But others, like Bernard Bailyn, Murray Rothbard, and Harry V. Jaffa deny this, squarely tying the revolution to the radical libertarianism of Paine and the authors of Cato's Letters.

Professor Jaffa of Claremont Men's College has for some years engaged in a profound debate with Professor M. E. Bradford of the University of Dallas (e.g., in the pages of *Modern Age*) on the precise meaning of the Declaration of Independence. While Jaffa regards it as quite Aristotelian, rationalistic, and supportive of the essential (initial) equality of human beings—just as Lincoln interpreted it when he freed the slaves—Bradford considers the Declaration an expression of the traditionalism of English society, which considered only Englishmen worthy of citizenship and protection under the law.

Both in ordinary perception and in scholarship, then, conservatism is linked to two divergent conceptions of the American political experience. In either case, however, a strong and historically unique individualistic element is recognized. American conservatives tend to be loyal enough to the letter of the founding American documents not to scoff at individualism and liberty. As Frank S. Meyer, the friend of both William F. Buckley and Murray N. Rothbard, wrote in his 1962 *In Defense of Freedom:* "At the source to which American conservatism inevitably returns—The Declaration of Independence, the Constitution and the debates at the time of its adoption—this simultaneous belief in objectively existing moral value and in the freedom of the individual person was promulgated in uncompromising terms."

While Meyer fairly captures mainstream conservative sentiment—not without some strain, however, if we count the New Right and Moral Majority in this group—there is evidence that he was too optimistic on the side of liberty. Of this, Mr. Reagan gave clear indication in his *Reason* interview. He didn't think that freedom of

the individual can be embraced "in uncompromising terms." As he put it, "There's bound to be a grey area, an area in there in which you ask is this government protecting us from ourselves or is this government protecting us from each other." Among the grey areas Mr. Reagan placed in the latter category: fire protection, railway safety regulations, food and drug regulation regarding safety, public education, gambling and prostitution and similar victimless crimes, and conscription in time of war. (The one form of government intervention Mr. Reagan opposed, although many other conservatives support it, is censorship, even when pornography is involved.)

Obviously, this is hardly a wholehearted "belief...in the freedom of the individual person"—certainly not in uncompromising terms. But are there perhaps good reasons for making some of these compromises? That is what many conservatives maintain in their standard objections to libertarianism, ever since the emergence of a serious libertarian movement in the United States.

Not that conservatism isn't riddled with theoretical problems we could dwell on. For one, it really isn't a point of view but rather an attitude or even taste. It is a predisposition to accept custom or habit or ritual or folk tale rather than reasoned conclusions, science, invention, and imagination. There is no need to recount here the liabilities of this predisposition. More fundamental are the problems that beset the kind of objections conservatives lodge against advocates of a *principled* position in favor of a free society. Such objections are useful to consider at times in their very best light. Despite its shortcomings, conservatism might have some useful criticisms to offer.

First, libertarians are accused of moral relativism, the view that no general precepts of right and wrong conduct, no general standards of morality, apply to human beings; that moral values are relative to the individual or his or her group. And some libertarians do fit this characterization—just as some conservatives degenerate into fascism from their blind devotion to custom and tradition. But libertarianism is in no way logically or philosophically wedded to moral relativism. It couldn't be, what with its uncompromising stand requiring that all persons respect the principle of individual responsibility and that no one, including government, may violate human dignity by means of coercion or its threat. Even in the area of personal ethics, many libertarians adhere to a firm, objectivist moral code. Of course, libertarianism does not as such specify the content of much of personal morality. But this is a far cry from endorsing relativism.

Second, conservatives claim that human reason is inadequate to the task of identifying right and wrong, so we need to rely on the force of tradition, embedded in law, even if it is coercive, to steer us right. But tradition did not emerge *ex nihilo*. Human *reason* gave rise to the traditions we now live with. So, human reason can just as readily criticize those traditions, based on what is new and better. Moreover, this conservative criticism rests on a picture of reason that focuses on the kind of deliberative reasoning employed in science, technology, and engineering, whereas the more prevalent type of reasoning exhibited by people as they go about their day-to-day affairs is ignored by conservatives. Libertarians regard that kind of reasoning, along with the more theoretical sort, as productive of wisdom, even against tradition, in all realms of human life.

As to the charge that the emulation of human reason detracts from the significance of religious faith, thus robbing humanity of higher dignity and opening the door to mechanistic humanism and even totalitarian manipulation—this too is misconceived. Whether God or nature gave human beings their reason is important, but not in the political context. From the point of view of libertarianism, what is crucial is that this *is* the tool with which political issues need to be confronted and problems solved. So the conservative may well be acting in defiance of God in rejecting or downplaying the instrument with which alone human beings can hope to solve their problems.

Third, conservatives believe libertarians are fostering libertinism by stressing only the value of liberty. But this ignores the enormous role libertarianism leaves to family, fraternity, professional associations, neighborhoods, churches, and other aspects and parts of the community when it comes to fostering the moral climate. Libertarianism encourages the development of these roles by recognizing that the State is not only illicit but incompetent and ultimately impotent in matters of moral leadership outside of its proper domain, the maintenance of justice.

Fourth, conservatives join liberals in distrusting private individuals and groups when it comes to dealing with extreme cases, emergencies, disasters—for example, the plight of the very poor, the retarded and crippled, and those hit by some natural calamity. Here too is a faith in bureaucracies that is unwarranted and wholely destructive of yielding genuine, reliable social approaches to coping with human life. The libertarian view is that although human action can go wrong, bureaucratic human action is more likely to go wrong in handling tasks outside government's proper function. Pretending that governments can institute successful policies (we all admit some accidental benefits from illicit government action) suppresses the real source of problem solving—in preserving and fostering health, welfare, education, hygiene, morality, and the rest of what governments butt into, even as they, along with Mr. Reagan, profess a commitment to individual liberty. Private initiative, although never to be promoted as a certain, utopian approach, is immensely potent. It is hopelessly thwarted, however, when systematically usurped and preempted by the illusion of State initiative.

Mr. Reagan should reconsider the grey areas he has accepted as warranting compromise of the principle of individual liberty. He should take to heart his very own words that "libertarianism and conservatism are traveling the same path," and he should make this into a policy, not just a bland wish. The world and this country today need far more human liberty than anything else conservatives have to offer. ◻

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The Washington Times

December 10, 1981

SUPREME COURT OVERTURNS SACCHARIN BAN

FDA MUST BEAR BURDEN OF PROOF

By Bruce K. Bell

WASHINGTON, Dec. 9—In a surprise move today, the Supreme Court struck down a controversial ban on saccharin by the Food and Drug Administration. The decision is expected to have sweeping long-term consequences for American consumers and for the future of food and drug regulation in the United States.

The Supreme Court heard arguments in the case on October 23, and legal experts expected the Court to uphold the FDA's ban, relying on a history of court decisions affirming the government's power to regulate food safety. Instead, the Justices, in a 5-to-4 decision, held that the section of the Food, Drug and Cosmetic Act under which the FDA acted is unconstitutional.

One of the major producers of saccharin says that its product will be back on market shelves within several weeks. The makers of other food products that have been banned in the past are expected to appeal the FDA 's rulings soon. And although legal experts have not yet analyzed the Court's decision, one prominent economist who has studied drug regulation by the FDA predicts that the decision will have a spill-over effect on over-the-counter and prescription drugs, increasing Americans' average life expectancy by several years.

The Court's opinion in the case was written by Chief Justice James Madison, who was joined by Justices Jefferson, Hamilton, Jay, and Adams. FDA officials are unwilling to comment on the Court's surprise move, saying that they have not yet seen the text of the Court's opinion. Because of the wide-ranging implications of this ruling, the opinion is reproduced here in full. (Justices T. Roosevelt, F. D. Roosevelt, J.F. Kennedy, and E. F. Kennedy filed a dissenting opinion, not published here.)

OPINION OF THE COURT

The federal Food, Drug and Cosmetic Act (FDCA) prohibits interstate commerce in any "adulterated or misbranded" food, drug, device, or cosmetic. The act specifies that an adulterated food is any food that is or contains an unsafe food additive. Under the "Delaney clause" of the FDCA, any food additive must be deemed unsafe if it is found, when ingested or after appropriate food safety tests, to induce cancer in man or animals. The Food and Drug Administration (FDA) is charged with administration of this act. The questions for decision are (1) whether the demands of the Delaney clause are impossible to satisfy, (2) whether the clause breaches due process of law under the Fifth and Fourteenth Amendments by presuming that all food additives shown to be carcinogenic (cancer-inducing) under certain conditions are also so under normal conditions of human use, and (3) whether the clause breaches due process of law by presuming harm, rather than safety, until proven otherwise.

I

The case arises out of a seizure action taken by the FDA against claimant, Saccharine Sweets, Inc. In a notice published in the *Federal Register* (June 10, 1981), the FDA stated that it had been determined, through administrative review of available animal and human studies, that the sugar substitute saccharin is a carcinogen. The FDA thereupon ordered a ban on its use as a food additive.

When claimant failed to withdraw its product, "Saccharine Sweets," from sale, the FDA proceeded with libel of information action, charging that the *res,* 14,203 packages, more or less, of claimant's product is adulterated within the meaning of the FDCA. The specific adulteration charged is violation of the so-called Delaney clause of section 409(c)(3)(A): "That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animals...." Claimant's product was seized by FDA agents on June 28, 1981, under section 304(a)(1): "Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into... interstate commerce...shall be liable

to be proceeded against...on libel of information and condemned in any district court...within the jurisdiction of which the article is found."

The claimant admits in its answer that the product was shipped in interstate commerce. It denies, however, that its product is adulterated as charged and urged that the District Court find the Delaney clause unconstitutional on several counts. The District Court instead upheld the seizure and ordered the condemnation of claimant's product. The Court of Appeals affirmed the decision. We granted *certiorari* to review this case because it raises important constitutional issues. We reverse.

II

The Delaney clause now permits the FDA to prohibit the manufacture, distribution, and use of a food additive if it determines, through administrative review of available animal or human studies, that the additive is carcinogenic

We grant claimant's impossibility defense, which rests on numerous court decisions that statutes are void if it is impossible to meet their demands.

under certain conditions, including administration of high doses to test animals. In *Bell* v. *Goddard* (1966), the court stated that the Delaney clause "is generally intended to prohibit the use of any additives which under any conditions induce cancer in any strain of test animal."[1] Hence, this clause does not permit any "risks-benefits analysis," any weighing of risks against benefits, by the potential users of an additive. If an additive is found to cause malignant changes in any animal fed the additive in any amount (any dose per day), then that additive cannot be allowed in any quantity in our nation's food supply.[2] The FDA has maintained, furthermore, that not only the Delaney clause, but the *general* food safety provisions, required a ban on saccharin.[3]

In 1977 the FDA presented evidence to Congress that saccharin causes excess (above the normal rate) bladder cancers in male rats when fed to them at high doses, either 5 percent or 7.5 percent of their diet.[4] For a person weighing 154 pounds, this is the equivalent of consuming 800 "diet" drinks a day, or about 0.4 pounds of saccharin a day, for an entire lifetime. Although animal tests at lower doses have produced no excess cancers, some medical experts urge that carcinogens, unlike toxic substances, may produce effects even at very low doses. As Dr. Guy R. Newell of the National Cancer Institute has stated:

> *It seems reasonable on an intellectual basis to assume that there may be a threshold of dose below which no toxic effect would occur. I say this because in all the situations that we know about, there is a dose response relationship. However, there are no experimental procedures available that allow us to establish such a threshold below which we can be absolutely certain that there is no population at risk. A concern for the public health requires on our part that for estimating risk for humans, it is appropriate to assume no threshold, at least until such time as a threshold can be demonstrated and measured.*[5]

Two major court decisions have adopted this position with respect to *pesticide residues in food.* In *Environmental Defense Fund, Inc.* v. *HEW* (1970), the court concluded:

> *[W]e think the events of the late 1950's indicate administrative action entirely consistent with, if not required by, Congress' expressed intent. At that time, Secretary Fleming indicated that there was no scientific basis for determining a "safe" residue level for a chemical known to produce cancer in experimental animals. Under such conditions, it would obviously be impossible to meet the congressionally imposed burden of establishing the safety of a residue of such a pesticide.*[6]

Again, in *Environmental Defense Fund, Inc.* v. *EPA* (1975), the court held that

> *[the EPA] Administrator's failure to determine a threshold level of exposure to aldrin/dieldrin does not render his determination improper, for he had concluded that the concept of a threshold exposure level has no practical significance where carcinogens are concerned. This is due in part to the irreversibility and long latency period of carcinogens. "[W]here the matter involved is as sensitive and fright-laden as cancer," and the statute places the burden [of proving safety] on the registrant, we shall not, assuming a substantial showing of danger, require the Administrator to make impossible proofs. In reviewing administrative actions, courts "cannot fairly demand the perfect at the expense of the achievable."*[7]

These two decisions thus held that congressional intent in legislation on pesticide residues in food places the burden of proving safety on those who wish to hold that there *is* a safe tolerance or threshold, even though it is granted that this burden is, scientifically, impossible to meet. Indeed, the FDA's own food additive regulations state that "[i]t is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of the use of any substance."[8]

We find that the attempt to demonstrate a safe tolerance or threshold is not merely a present scientific impossibility but is actually an *absolute* impossibility. Even if a manufacturer presents "statistically significant" evidence that there is no harm at a certain level, the FDA can always argue, without producing any evidence of harm, that this evidence is insufficient to show with "absolute certainty that there *is* a threshold below which an additive is harmless. Since no one is omniscient, no one can be absolutely certain that someone, sometime, under some conditions, will not be harmed through the use of a food additive.

1. 366 F. 2d 177, 181 (7th Cir. 1966).
2. J. M. Coon, "The Delaney Clause," 2 *Preventive Medicine* 150 (1973).
3. Donald Kennedy's testimony, Hearings, Subcommittee on Health and the Environment of the Committee on Interstate and Foreign Commerce of the House of Representatives, 95th Cong., 1st sess., 64 (June 27, 1977).
4. Office of Technology Assessment, Congress of the United States, *Cancer Testing Technology and Saccharin* 20 (1977).
5. Hearings, *supra* note 3, at 44.
6. 428 F. 2d 1083, 1092 (D.C. Cir. 1970).
7. 510 F. 2d 1292, 1298 (D.C. Cir. 1975).
8. 21 C.F.R. 170.3(i).

On the other hand, we take judicial notice of the fact that it *is* possible to show that an additive is *harmful* below a purported tolerance or threshold. This can be done simply by producing *one* animal or human who has been harmed at a dose below the presumed threshold or by producing "statistically significant" positive results in a group of animals or humans showing harmful effects below the presumed threshold.

For these reasons, we grant claimant's impossibility defense, which rests on numerous court decisions that have declared statutes void if it is impossible to meet their demands. "The imperfection of the law will not render it void, unless it is so imperfect as to render it impossible to execute it."[9] "Though a law is imperfect in its details, it is not void, unless it is so imperfect as to render it impossible to execute it."[10]

This position has been upheld with respect to *thresholds* of harm. In *Lone Star Gas Co.* v. *Kelly* (1942), a personal injuries damage suit resulting from a gas stove explosion wherein negligence of Lone Star Gas Co. was alleged in that it had failed "so to odorize its gas that a person with an ordinary sense of smell could detect the presence of gas at the time and place of the explosion," the court held:

> *While it probably was not so intended by the [Railroad] Commission [of Texas], the[ir] order clearly calls for odorization although gas may be present only in infinitesimal proportion, in quantity so minute as to be wholly inconsequential and utterly without dangerous potentialities to the user, but which can never be definitely determined by the one charged with the obligation to perform. The law does not demand the impossible or the vain. If it attempts to do so it is unreasonable and the attempt is void. Below what proportion in the union of gas and air is the presence of the gas harmless? At what proportion in the union does the presence become discoverable because of the malodorant? Conversely, below what proportion is its presence not so discoverable? Obviously these questions are open to debate, and that is sufficient to invalidate the order.*[11]

We agree that if a law attempts to demand "the impossible or the vain" and, in particular, demands that a threshold be demonstrated, then "it is unreasonable and the attempt is void." We thereby declare section 409(c)(3)(A), the Delaney clause, of the Federal Food, Drug and Cosmetic Act to be void.

Thus, the burden of persuasion must be thrown on the FDA as plaintiff in the present case to show either that there is *not* a threshold for the carcinogenicity of saccharin or else that the product in question, "Saccharine Sweets," contains saccharin at a level *above* the threshold of safety. Although this may be difficult to demonstrate, it is not impossible. Moreover, mere difficulty in a given case to find proof to establish plaintiff's cause does not obviate the necessity of furnishing it.[12] Again, that a fact essential to a party's case is unavailable does not relieve the party from his burden of proving such essential fact.[13]

III

The dissenting opinion in this case criticizes our finding that the Delaney clause should be declared void because it is impossible to rebut its presumption that all food additives shown to be carcinogenic under certain conditions (including high doses to test animals) are also so under normal conditions of human use. The dissent holds that the majority opinion is not in line with the trend of recent court decisions, and it calls upon the argument in Mr. Justice Rehnquist's dissent in *Vlandis* v. *Kline* (1973), in which Chief Justice Burger joined:

> *There will be, I fear, some ground for a belief that the Court now engrafts the "close judicial scrutiny" test onto the Due Process Clause whenever we deal with something like "permanent irrebutable presumptions." But literally thousands of state statutes create classifications permanent in duration, which are less than perfect, as all legislative classifications are, and might be improved on by individualized determinations.*[14]

These Justices also held, following Justice Douglas, that

> *[t]he doctrine that [formerly] prevailed. . . —that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. . . . [Thus,] the fact that a generally valid rule may have rough edges around its perimeter does not make it unconstitutional under the Due Process Clause of the Fourteenth Amendment: ". . . It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it."*[15]

Thus, the dissenting Justices argue that since the legislative purpose of the Delaney clause is to protect the American public from things against which they cannot adequately protect themselves, the irrebutable presumption of this clause lies within constitutional bounds of due process of law. They further note that it has long been held that

> *[w]herever the character of a measure is precautionary it operates on persons, things or conditions no matter whether in every individual case the precaution is necessary or not. The principle is that where a measure could not be enforced without uniformity, the individual interest must yield to this requirement. Thus in the case of vaccination it would not be possible to inquire or discover whether each child vaccinated was predisposed toward small-pox. . . . The danger being general, a measure would be defeated in its beneficial effect, if the question of its necessity could be raised in each particular case.*[16]

Against this line of reasoning followed in the dissent,

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9. *Cochran's Heirs' Lessee* v. *Loring,* 17 Ohio 409, 427 (1848).
10. *Gordon* v. *State,* 46 Ohio St. 607, 23 N.E. 63, 64, 6 L.R.A. 752. Compare also, *Commonwealth* v. *Moir,* 199 Pa. 534, 49 A. 351, 353, 85 Am. S.R. 801, 53 L.R.A. 837; *Miller* v. *Belmont Packing & Rubber Co.,* 268 Pa. 51, 110 A. 802, 805; *State* v. *Le Blond,* 108 Ohio St. 41, 140 N.E. 491, 492; and *People* v. *Briggs,* 193 N.Y. 457, 86 N.E. 522, 523 (C.A. N.Y. 1908).
11. 140 Tex. 15, 165 S.W. 2d 446, 448 (1942).
12. *Boxrud* v. *Ronning Machinery Co.,* 217 Minn. 518, 15 N.W. 2d 112 (1944).
13. *Middletown Trust Co.* v. *Bregman,* 118 Conn. 651, 174 A. 67 (1934).
14. 412 U.S. 441, 462.
15. 412 U.S. 441, 468, 465-466.
16. Freund, *The Police Power: Public Policy and Constitutional Rights* 26-27 (1904).

we are inclined to agree with the majority opinion of *Vlandis* v. *Kline:*

> *Statutes creating permanent irrebutable presumptions have long been disfavored under the Due Process Clause of the Fifth and Fourteenth Amendments. In* Heiner *v.* Donnan *[1932]... the Court stated that it had "held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment."*[17]

We maintain that claimant is here "denied a fair opportunity to rebut" the Delaney clause presumption that there are no thresholds of carcinogenicity since it is *impossible* to rebut this presumption, when it is taken as a *general presumption,* even though it may well be false with regard to specific food additives.

We have been presented evidence of a great deal of medical dispute on this issue, and we are not convinced that the FDA has shown the possibility of harm, "an evil at hand for correction," for which there is thereby the necessity for "precautionary measures." Even Ernst Freund, who was largely sympathetic to state regulations in his famous work *The Police Power* (1904), maintained that "[t]he freedom of medical science requires that under the sanitary power no exclusive standards of medical treatment be established, as long as there is respectable scientific dissent from the correctness of the theories which the state might seek to establish."[18] In the instant case of "Saccharine Sweets," we find that there is this "respectable scientific dissent" from the state's view that there are no thresholds of carcinogenicity, and we maintain that the product's manufacture and use, particularly by diabetics and the weight-conscious, cannot be restrained under the police power. For these reasons and others noted below, we hold that each food additive case must be tried on its own merits.

We note that there is some medical evidence that some people may well be at greater risk of developing cancer by *not* using saccharin.

We also wish to distinguish the situation presented here from those in which the rights of other parties are involved, as is the case with *contagious diseases.* It is quite understandable why there was such an increase in public health and safety measures after Pasteur's discoveries concerning infectious diseases and the germs that spread them.[19] When we are dealing with contagious diseases, we can well agree with the dissenting opinion that there is scientific justification for "utilitarian" approaches, such as quarantines and vaccinations, that protect the interests and rights of *third* parties.

We differ from the dissent, however, in its attempt to apply this line of reasoning to disorders of a *personal* and *noncontagious* nature. The dissenting Justices argue that the Delaney clause protects the interests of the human *population,* but they ignore the fact that *statistical* studies do not necessarily have any direct relevance to the *individual.* It is well known that in many cases there are major physiological differences in human beings, so that what is harmful or beneficial for one may very well not be so for another. Indeed, we take judicial notice of the fact that this is the origin of normal distribution (bell-shaped) curves showing individual responses to particular substances.

More specifically, we note that three possible situations have been presented in the medical literature with regard to *infectious* diseases:

(*a*) A person's "natural" resistance is so high relative to the "potential" virulence of the infectious agent that overt disease will not occur in any case.

(*b*) A person's natural resistance is in such delicate balance with the potential agent virulence that other physiological factors in the person will determine to a greater or lesser extent the frequency and/or severity of overt disease.

(*c*) A person's natural resistance is so low in relation to the potential agent virulence that overt disease will result regardless of other physiological factors present in the individual.[20]

Situation (*c*) characterizes a general epidemic where few, if any, members of the population have developed sufficient levels of natural resistance to a given pathogenic agent. This case is the one for which governmental intervention under the police power is appropriate. Since saccharin, however, is generally regarded as a "weak" carcinogen,[21] if it is even considered one at all, the instant case is similar to case (*a*) or (*b*), where individual physiological differences play a significant role.

In the present case of saccharin, the strongest medical evidence supporting the FDA's ban is a recent Canadian study on humans. Using 632 persons with bladder cancer, 480 males and 152 females, and the same number of matched controls, this study found a statistically significant 60 percent increase in the risk of bladder cancer in *males* who used saccharin.[22] On the other hand, *females* in this study had a 40 percent *decrease* in the risk of bladder cancer associated with saccharin use, a result that "just barely missed" being statistically significant.[23] Even without knowing why this is so, the question immediately presents itself, Why not allow at least females to use saccharin? Again, there are literally thousands of diabetics who must restrict their caloric and sugar intake, and thousands more over-weight individuals and their doctors who are willing to testify that they require saccharin to maintain their weights at acceptable levels and that for them the risks of getting cancer are far outweighed by the benefits of restricting their caloric intake, primarily from sugar, to avoid obesity and subsequent cardiovascular risks.[24] We also note, on this point, that there is some medical evidence that obesity may predispose some people to major forms of cancer, such as breast,

17. 412 U.S. 441, 446 (1973).
18. Freund, *supra* note 16, at 514.
19. F. Glaive, *Pure Food and Drugs in California* 59-60 (1957).
20. N.S. Scrimshaw *et al.*, "Interaction of Nutrition and Infection," 237 *American Journal of the Medical Sciences* 383 (1959).
21. Office of Technology Assessment, *supra* note 4, at 22-23.
22. G.R. Howe *et al.*, "Artificial Sweeteners and Human Bladder Cancer," *Lancet* 579 (Sept. 17, 1977).
23. W.R. Havender, "Saccharin in Suspense," *Inquiry* 22 (Nov. 26, 1979).
24. Donald Kennedy's testimony, *supra* note 3, at 78.

colon, and endometrial cancers, so that these persons may well be at greater risk of developing cancer by *not* using saccharin.[25]

We find that the Delaney clause not only creates an irrebutable presumption against thresholds, as noted previously, but also creates one concerning the applicability of statistical animal or human studies to specific individuals or human populations (in this case, especially women, diabetics, and the overweight). Although it is within the power of the legislature to establish presumptions of law that are irrebutable, statutes that declare one fact conclusive evidence of another material fact in controversy are unconstitutional if the former is not, in and of itself, by virtue of its own force, conclusive.[26] In this case, we hold that the carcinogenicity of saccharin at high doses is *not* conclusive evidence of its harm at the amounts contained in claimant's product, "Saccharine Sweets." Again, we find that, owing to individual and perhaps unique responses to saccharin consumption, the Delaney clause breaches due process of law by attempting to set up a *general* presumption of harm concerning an entire human population of diverse individuals. It therefore cannot be permitted to stand.

IV

Finally, we find that the Delaney clause breaches due process of law by presuming harm, rather than safety, until and unless proven otherwise. Against this holding, the Government and the dissenting opinion argue that this presumption of the Delaney clause is in line with other statutes protecting the public health. They maintain that, under the police power, the Government must only show that a product is adulterated and *not* that it is harmful to anyone's health.[27] They also point to Chief Justice Burger's dissent in *Eisenstadt* v. *Baird* (1972):

> *So far as I am aware, this Court has never before challenged the police power of a State to protect the public from the risks of possibly spurious and deleterious substances.... Moreover, a statutory classification is not invalid "simply because some innocent article... may be found within the proscribed class."... [I]f the Constitution can be strained to invalidate the Massachusetts statute... we could quite as well employ it for the protection of a "curbstone quack," reminiscent of the "medicine man" of times past, who attracted a crowd of the curious with a soap box lecture and then plied them with "free samples" of some unproven remedy*[28]

The dissenting opinion also relates a long history of laws and court decisions, especially in the areas of negligence and public health and safety, that place the burden of proof on the defendant because of (*a*) the complexities of life originating from the Industrial Revolution; (*b*) the desire to expedite trials and reduce the costs of litigation;[29] (*c*) the greater knowledge and ability of the defendant to produce evidence;[30] and, most importantly, (*d*) certain social policies designed to protect the public health. Thus, it has been held that the placement of the burden of proof is generally a question of policy and fairness.[31] And the dissent notes, moreover, that the power of the state to make uniform and impartial changes in the rules of evidence with regard to the burden of proof is practically unrestricted.[32]

Finally, the dissent points to specific court decisions on carcinogens and thresholds of harm. In *Environmental Defense Fund, Inc.* v. *HEW* (1970), for instance, the court of appeals held:

> *Before any pesticide-chemical residue may remain in or on a raw agricultural commodity, scientific data must be presented to show that [it]... is safe from the standpoint of the food consumer. The burden is on the person proposing the tolerance or exemption to establish [its] safety.*[33]

Again, in *Environmental Defense Fund, Inc.* v. *EPA* (1975), it was held that the Federal Insecticide, Fungicide, and Rodenticide Act

> *does not require the [EPA] Administrator to establish that the product is unsafe, but places "[t]he burden of establishing the safety of a product... at all times on [the producer]."*[34]

We cannot agree with this line of argument. As the majority of this Court held in *Eisenstadt* v. *Baird* (1972) against the view that "contraceptives are immoral as such":

> *Such a view of morality is not only the very mirror image of sensible legislation; we consider that it conflicts with fundamental human rights. In the absence of demonstrated harm, we hold it is beyond the competency of the State.*[35]

Again, the concurring opinion of Justices White and Blackmun in the same case held that in the absence of

> *facts demonstrating that the hazards of using vaginal foam are common knowledge or so incontrovertible that they may be noticed judicially... we could not sustain appellee's conviction.... [T]o sanction a medical restriction upon... a contraceptive not proved hazardous to health would impair the exercise of the constitutional right [to privacy].*[36]

We believe that there is no reason why this same position should not also be accepted with regard to the food safety laws. As the court of appeals held in *Hess & Clark* v. *FDA* (1974), a case involving an FDA revocation of its

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25. F.J. Rauscher, in "The Saccharin Ban: Risks vs. Benefits," American Enterprise Institute 5 (1977).
26. Compare *Handy* v. *Delaware Trust Co.*, 285 U.S. 352, 76 L. Ed. 793, 52 S. Ct. 371; *Heiner* v. *Donnan*, 285 U.S. 312, 76 L. Ed. 772, 52 S. Ct. 358; and *Schlesinger* v. *Wisconsin*, 270 U.S. 230, 70 L. Ed. 557, 46 S. Ct. 260, 43 A.L.R. 1224.
27. *Commonwealth* v. *Pflaum*, 236 Pa. 294, 84 A. 842, 845 (S. C. Pa. 1912); *U.S.* v. *716 Cases "Del Comida Brand Tomatoes,"* 179 F. 2d 174 (10th Cir. 1950); and *U.S.* v. *1 Device Radiant Ozone Generator, etc.*, Notices of Judgement (No. 2987) issued June 1950 (W.D. Missouri).
28. 405 U.S. 438, 469, 472 (1972).
29. M. Shain, *Res Ipsa Loquitur Presumptions and Burden of Proof*, 2d ed. 161-62 (1974).
30. *Garcia* v. *Industrial Accident Comm.*, 41 Cal. 2d 689, 263 P. 2d 8; *Midwest Transfer Co.* v. *Preferred Accident Ins. Co.*, 342 Ill. App. 231, 96 N.E. 2d 228; *Selma, R. & D. R. Co.* v. *U.S.*, 139 U.S. 560, 35 L. Ed. 266, 11 S. Ct. 638.
31. *George* v. *Bekins Van & Storage Co.*, 196 P. 2d 637, subsequent opinion 33 Cal. 2d 834, 205 P. 2d 1037.
32. *Johnson, Inc.* v. *Warden*, 76 Cal. App. 2d 697, 173 P. 2d 838.
33. 428 F. 2d 1083, 1086-87 (D.C. Cir. 1970).
34. 510 F. 2d 1292, 1297 (D.C. Cir. 1975).
35. 405 U.S. 438, 453 (1972).
36. 405 U.S. 438, 464 (1972).

previous approval of animal feed drugs containing diethylstilbestrol (DES):

> *The statute does not say that because a drug leaves residues, it is unsafe* per se. *We think it implicit in the statute that when the FDA proposes to withdraw an approval because new evidence shows the drug leaves residues, it has an initial burden of coming forward with some evidence of the relationship between the residue and safety to warrant shifting to the manufacturer the burden of showing safety.*[37]

Following these decisions, we hold that the FDA as plaintiff must present evidence to demonstrate harm before it can revoke its long-time approval of saccharin as a food additive—before it can remove it from its "generally recognized as safe" (GRAS) list and prohibit claimant from selling its product.[38]

We also believe that this position is more in line with long-established legal principles. The most fundamental rule, dating back to Roman law, is that "the burden of proving a fact is on the party who asserts it, and not on the party who denies it,"[39] which has been upheld in American courts many times.[40] Again, the following rules on legal presumptions are usually held:

(*a*) No one shall be called on to prove a negative, or be put on his defense, without sufficient evidence against him having been offered, which, if not contradicted or explained, would be conclusive evidence of his wrongdoing.[41] Thus, failing the presentation of such evidence, there is no necessity to raise a defense. And, as William Best observed, this rule is derived from "the very nature of things and grounds of one's belief," and it has been adopted into the jurisprudence of every "enlightened country."[42]

(*b*) The burden of proof rests upon the party who asserts the *affirmative* of the issue.[43] For example, in a case involving the question whether work was properly done,

> the proper test is to which party would be successful if no evidence at all were given. . . . *[S]upposing no evidence were given on either side, the defendant would be entitled to the verdict, for it was not to be assumed that the work was badly executed; and consequently that the [burden of proof] lay on the plaintiff.*[44]

This position has been generally adopted in American courts.[45] The side that would be unsuccessful if no evidence were given, *if no one said anything,* has the burden of proof. Thus, in this case, if nothing were said in the trial court, then it is to be assumed that the product is *not* causing harm to anyone. The *affirmative* of the case is the position that "there is at least one person being harmed by this product," while the *negative* is that "no one is being harmed by it."

Moreover, we do not take this decision on the placement of the burden of proof lightly, since "[i]n all kinds of litigation it is plain that where the burden of proof lies may be decisive of the outcome."[46] The rule fixing the burden of proof is important in the administration of justice, and it constitutes a substantial right of the party on whose adversary the burden rests, so that it should be carefully guarded and rigidly enforced.[47] In this regard, it has been commonly held that the burden of proof is always upon the plaintiff to prove the essential elements of his cause of action[48] and that the defendant's right to have the plaintiff bear the burden of proof upon the whole case is a substantial right of which the defendant should not be deprived.[49]

We also lay stress on the famous position of Thayer and Wigmore on this issue. Concerning rebutable presumptions, those presumptions that merely presume one side of the issue to be true or false until proven otherwise, Thayer held that the "burden of proof never shifts," so that it always lies throughout the trial upon the party who had it at the beginning.[50] To this doctrine must be added the Thayer-Wigmore "discovery" that the so-called burden of proof is actually made up of *two* burdens. The first is the "burden of persuasion," which has about the same meaning as previously given to burden of proof. The second is the "burden of going forward" with one's evidence to prevent the trial judge from directing the trier of fact (usually a jury) to return a verdict for the other party.[51]

Given this distinction, although the "burden of going forward" with one's evidence may shift between the defendant and plaintiff throughout a trial,[52] the doctrine

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37. 495 F. 2d 975, 993 (D.C. Cir. 1974).

38. Saccharin has been used since the 1880s, first as an antiseptic and food preservative. Diabetics first used it in the mid-1880s, and the canning industry began using it as a sweetener in 1907.

39. Justinian, *Digest,* 22.3.2. An old Roman story nicely illustrates this early conception. Numerius, the governor of Narbonensis, was on trial before the Emperor Julian. He contented himself with merely denying his guilt, and there was not sufficient evidence against him to prove his guilt. His adversary, Delphidius, a "passionate man," seeing that the failure of the accusation was inevitable, could not restrain himself, and exclaimed, "Oh, illustrious Caesar! If it is sufficient to deny, what hereafter will become of the guilty?" To which Julian replied, "If it suffices to accuse, what will become of the innocent?" (From Ammianus Marcellinus, *Rerum Gestarum,* lib. XVIII, c.l.).

40. *O'Neill* v. *Metropolitan Life Ins. Co.,* 345 Pa. 232, 26 A. 2d 898, 142 A.L.R. 735.

41. From *Law Magazine* (1831), as quoted in Shain, *supra* note 29, at 72.

42. W. Best, *An Exposition of the Practice Relative to the Right to Begin and Reply in Trials by Jury* 3 (1886).

43. Compare *Lilienthal* v. *U.S.,* 97 U.S. 237, 24 L. Ed. 901; *Omaha Hotel Co.* v. *Wade,* 97 U.S. 13, 24 L. Ed. 917; and *Arthur* v. *Unkart,* 96 U.S. 118, 24 L. Ed. 768.

44. Best, *supra* note 42, at 20.

45. For instance, *Cowen Co.* v. *Houck Mfg. Co.,* 249 F. 285, 161 C.C.A. 293 (1918); *In re Hagan's Estate,* 143 Neb. 459, 9 N.W. 2d 794, 154 A.L.R. 573 (1943); *Colovos* v. *Gouvas,* 269 Ky. 752, 108 S.W. 2d 820, 113 A.L.R. 871.

46. *Speiser* v. *Randall,* 357 U.S. 513, 525, 2 L. Ed. 2d 1460, 78 S. Ct. 1332.

47. *Skyland Hosiery Co.* v. *American Ry. Express Co.,* 184 N.C. 478, 114 S.E. 823 (1922); *Standard Accident Ins. Co.* v. *Cloutier,* 92 N.H. 449, 32 A. 2d 684, 147 A.L.R. 626 (1943); *O'Donnell* v. *Prudential Ins. Co.,* 58 Montg. 257 (Pa. Com. Pl. 1942).

48. *Hauser* v. *Western Union Telegraph Co.,* 150 N.C. 557, 64 S.E. 503 (1909); *Amick* v. *Gooding Amusement Co.,* 243 F. Supp. 782 (D.C. S.C. 1966); *Boyd* v. *Brown,* 192 Va. 702, 66 S.E. 2d 559.

49. *Hughes* v. *Atlantic City & S.R. Co.,* 85 N.J. Law 212, 89 A. 769, L.R.A. 1916A, 927 (1914).

50. *Commercial Molasses Corp.* v. *New York Tank Barge Corp.,* 314 U.S. 104, 86 L. Ed. 89, 62 S. Ct. 156; *Southern R. Co.* v. *Prescott,* 240 U.S. 632, 60 L. Ed. 836, 36 S. Ct. 469; *Lilienthal* v. *U.S.,* 97 U.S. 237, 24 L. Ed. 901.

51. *Donovan* v. *St. Joseph's Home,* 295 Ill. 125, 129 N.E. 1 (1920); *Sellers* v. *Kincaid,* 303 Ill. 216, 135 N.E. 429 (1922); *Spilene* v. *Salmon* Falls Mfg. Co., 79 N.H. 326, 108 A. 808 (1920).

52. *Tower Grove Bank & T. Co.* v. *Duing,* 346 Mo. 896, 144 S.W. 2d 69, 152 A.L.R. 1325; *Judson* v. *Beehive Auto Serv. Co.,* 136 Or. 1, 297 P. 1050, 74 A.L.R. 944.

that "the burden of proof never shifts" means that the ultimate "burden of persuasion" always lies on the party who has the affirmative of the issue at the start.[53] And we have already concluded that the FDA has the affirmative to show that there is at least one person who is harmed by the use of claimant's product.

The dissent urges, as noted above, that this holding goes against "the power of the state to make uniform and impartial changes in the rules of evidence with regard to the burden of proof [which] is practically unrestricted." But as this Court stated in *Speiser* v. *Randall:*

> *It is of course within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion, "unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.*[54]

We believe our position on burden of proof to be such a "fundamental principle of justice." Moreover, even though

> *the legislature may go a good way in raising... [presumptions] or in changing the burden of proof,... there are limits.... [I]t is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.... [And] in civil cases too this Court has struck down state statutes unfairly shifting the burden of proof.*[55]

With the burden of persuasion properly placed on the FDA, we also find that they have not satisfied this burden. We have already noted that the leading human study they rely upon showed mixed results with regard to males and females. And actually the positive results on males can also be questioned since the Canadian authors themselves noted that

> *[e]xamination of the data showed substantial differences between cases and controls with respect to... occupational history, a record of bladder and kidney infections, smoking history, consumption of incident coffee, and the use of non-public water supply.*[56]

Hence, even though these "confounding variables" were controlled for, there could well be "*false* positives" in this study, so that an increase in bladder cancer is attributable to something other than saccharin. On this point, although saccharin usage has increased greatly since World War II, there has not been a corresponding increase in the rate of bladder cancers. Indeed, since 60 percent of the increase seen in bladder cancers can be associated with increased smoking and occupational exposure of males to certain industrial chemicals, these factors, and not saccharin, appear to be of much greater concern.[57]

Another recent American study on 500 bladder cancer patients and matched controls found no significant differences in saccharin use between the two groups,[58] and an editorial in a leading medical journal has observed that

> *[a]t least seven pertinent epidemiologic studies show that bladder-cancer mortality patterns... are not correlated with saccharin consumption and that diabetic patients have no excess mortality from bladder cancer despite their relatively high consumption of saccharin.... All of these studies may be criticized on several counts, the most serious being that they were too small.... However, neither this nor other criticisms explain why all the studies are negative.*[59]

It has also been noted that if saccharin caused at least 10 percent of the 30,000 bladder cancer cases diagnosed each year, then this "should have been securely seen in these studies."[60]

Upon reviewing this available evidence, we conclude that the only thing the FDA has proved, if anything, is that an average male weighing 154 pounds *may* contract bladder cancer if he consumes 0.4 pounds (175 grams) of saccharin a day for an entire lifetime. But it has *not* been shown that saccharin causes cancer *below* this dosage, and especially at a dosage a person would receive by consuming the claimant's product, which meets the former interim FDA standard on saccharin of 30 *milli*grams per serving in processed foods. At this proportion, a person would have to consume about 6,000 servings per day of claimant's product to risk bladder cancer from the saccharin it contains. Moreover, since it has been known since at least 1911 that saccharin can disturb digestion in an amount of 300 *milli*grams to 1 gram each day,[61] it is difficult to see how anyone could even begin to approach the required consumption of 175 grams per day in order to stand the reported increased risk of bladder cancer.

Hence, we find that the preponderance of evidence lies in favor of the claimant and therefore that the trial court's findings of fact are clearly erroneous. Since this is the standard test for appellate review,[63] the judgment the claimant appeals from is reversed, and the cause is remanded with directions to dismiss the libel against and condemnation of claimant's product, "*Saccharine Sweets.*" In the words of the vernacular, we hold that "where no harm has been shown, there is no foul."

[*This is a fictional US Supreme Court opinion, although the citations are real. Both the opinion and the decision are purely imaginary in today's legal and social context, but the Justices could, legally, write it if they wanted to.*]

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53. *Ranney* v. *Lewis,* 182 Mo. App. 58, 167 S.W. 601 (1914); *Clapper* v. *Lakin,* 343 Mo. 710, 123 S.W. 2d 27 (1939); *Stocking* v. *Johnson Flying Service,* 387 P. 2d 312 (Mont. 1963).
54. 357 U.S. 513, 523, 2 L. Ed. 2d 1469, 78 S. Ct. 1332.
55. *Id.*
56. Hearings, *supra* note 3, at 56.
57. W. R. Havender, "Ruminations on a Rat: Saccharin and Human Risk," *Regulation: AEI Journal on Government and Society* 21 (Mar./Apr. 1979).
58. *Id.,* at 20.
59. K. J. Isselbacher and P. Cole, "Saccharin—The Bitter Sweet," 296 *New England Journal of Medicine* 1349 (June 9, 1977).
60. Havender, *supra* note 57, at 21.
61. *State* v. *Empire Bottling Co.,* 261 Mo. 300, 168 S.W. 1176, 1177 (S.C. Mo. 1914).
62. *C. C. Co.* v. *U.S.,* 145 F. 2d 462 (1944), on rehearing, 147 F. 2d 820 (5th Cir. 1945); *U.S.* v. *11 1/4 Dozen Packages "Mrs. Moffat's Shoo Fly Powders for Drunkenness,"* 40 F. Supp. 208 (W.D. N.Y. 1941); *U.S.* v. *88 Cases Bireley's Orange Beverage,* Civil No. 4711 (D.C. N.J. 1949), reversed, 187 F. 2d 967; *U.S.* v. *5 Cases "Figlia Mia Brand,"* 179 F. 2d 519 (2nd Cir. 1950), cert. denied 339 U.S. 963.

Bruce K. Bell has a B.S. in physics and an M.A. in the history and philosophy of science. This article was prepared while Mr. Bell was a Reason Foundation summer research fellow.

WHO CAN CROSS OUR BORDERS?

A new solution to the immigration problem

BY DAVID J. REES

UPI

THE UNITED STATES has acquired an enviable reputation as a haven for refugees. The adventurous and the skilled have gravitated to its opportunities; the victims of political or religious repression and economic hardship have sought and found sanctuary on its welcoming shores. Until the Immigration Acts of 1921 and 1925, few were turned away, and those who were admitted generally found a better life than they had left behind.

This "open door" policy has for the most part become a matter of historical curiosity, however. US immigration policies are increasingly complex, often arbitrary, and frequently discriminatory on either a racial or educational basis. They leave the United States (and other wealthy nations following similar policies) open to the charge of exploiting the limited skilled-manpower resources of poorer countries. Yet the conventional wisdom is that there is no alternative, that the more desirable countries must close their doors if the well-being of their own citizens is to be preserved.

But suppose there were an alternative immigration policy that would eliminate the problem of determining desirable quota allocations and devising fair criteria for selecting amongst applications for entry visas. Suppose that at the same time every living United States citizen would be given the opportunity to improve his

economic well-being, that all Americans would be able to enjoy the benefits of an improved standard of living, and that poorer Americans would in principle gain most of all, and at no cost to the taxpayer. Within the United States, average productivity would rise and economic growth would be stimulated.

Nor would the benefits of the proposal be confined to residents of the United States. Abroad, relatively skilled and hard-working people in foreign countries would gain immediately. And foreign governments, by adopting a similar scheme, would be able to assist their own poorest citizens in the same way.

Does it sound too good to be true? Then read on:

THE PLAN

US citizenship is a desirable asset, otherwise there would be no "immigration problem." Unlike other desirable assets, however, it is not transferable. Only the right combination of genes and geography will win you that coveted citizenship. But is there any reason why this should be so? Why not let a US passport be *marketable?* The purchaser of an American passport would be entitled to live and work in the United States. The vendor would be required to leave and live in a foreign country. Foreigners could buy their way into paradise. And it would have all the good effects proposed above.

Consider why there could be a "market in nationality." Any child born within the political boundaries of the United States is the immediate recipient of significant advantages. Average incomes are high. Every citizen is the beneficiary of social assets that are entirely independent of his own efforts—in addition to such obvious factors as transport services, communications, and good drainage, other features that are often ignored, such as an established body of law, a free press, the English language, and the right to leave the country. In addition to these assets, he may have or acquire specific skills. His lifetime earnings are strongly dependent on both these ingredients.

An accountant in India earns less than an accountant in the United States. If he moves from India to the United States he increases his lifetime expected earnings—not only because he becomes a better accountant, if he does, but because the cooperating and complementary factors offered by the American economy serve to increase his personal productivity. As elsewhere, however, these advantages are not equally distributed in America, and many poor Americans are less well off than rich people in poor countries. A market for passports would offer Americans the opportunity to realize in cash terms the value of all the social assets they presently enjoy.

THE PRICE

As a first approximation, let us suppose that in a free market the going price of an American passport is the present value of the median US lifetime income (with the anticipated growth in real earnings included). The citizens most likely to sell their passports will be those whose income in the United States is below this level. They may choose to sell at this price and leave for, let us say, Poland. With the kitty they take along, they need never work again. They will be able to live at the average American standard of living—a standard of living higher than it would have been in the United States—for the rest of their lives. And in relative terms it will be much higher, since average incomes in Poland are below those in the United States.

Under this proposal, poorer nations will find it easier to attract skilled personnel than at present.

The purchaser of the passport will also benefit monetarily if his anticipated US earnings, less the price of the passport, are higher than they were in his original country (or higher than his original earnings less the price his own passport will fetch, if his country also allows their sale). He will only move if he expects to be made better off by the transaction. Since his earnings must exceed those of the person whom he has replaced, average productivity in the United States has increased.

The effects of the transaction are more far-reaching than this, however. The supply of low-paid (unskilled) workers in the United States is reduced, thereby tending to increase relative returns to this group of workers. Conversely, relative returns to skilled workers fall. There is a tendency toward income equalization in the United States. There is also a tendency toward equalization of incomes internationally. Poorer nations that allow a market in their passports will find it easier to attract skilled personnel than at present. A skilled person in a richer nation could sell his existing passport at a premium (because he earns more than the median income) and purchase the passport of the poorer nation relatively cheaply.

THE PRACTICALITIES

Before such a system would work smoothly, certain practical matters would need to be cleared up.

- *Time dating.* At present, US citizenship has an expiration date. It ceases to exist when the passport holder dies. Under the scheme proposed here, however, the number of American passport holders would then tend gradually to approach the total number of Americans who have ever lived. In effect, American passports would be subject to continuous inflation at a rate governed by the birthrate of American citizens, with a corresponding decline in their relative value. If passports had an expiration date, this wouldn't happen.

The expiration of any passport purchased could be governed by a simple actuarial calculation of the life expectancy of a person born on the date indicated in the passport. Take a man born on January 1, 1922, who on January 1, 1982, has a life expectancy of, let us say, 15 years. If someone purchased this man's passport on this date, he would acquire rights of US citizenship for 15 years. On January 1, 1997, he would have the choice of purchasing another passport or leaving the United States.

- *Women and men.* Since women have a higher life expectancy than men, the actuarial calculations would tend to increase the value of their passports. On the other hand, it is possible that the social assets available to women are different from those available to men. In general, the expected earnings of women are lower than those of men. Never-

theless, it is relative positions that are important. Women in the United States are probably advantageously placed relative to the position of women in most other countries. On this basis, it may therefore be anticipated that the price of a female passport would be closer to that of a male than average earnings would suggest.

But there seems no reason why the sex of the purchaser should correspond to that of the vendor. If not, since women live longer than men, on average female passports would command a premium in the market compared to the passports of males of the same age.

• *Children.* A strong incentive would exist for foreigners to move into the United States, produce a child, and then leave, thereby making a capital gain on the child's American citizenship. This would artificially inflate the US birth rate and place a burden on maternity services. No doubt numerous schemes can be devised to discourage this practice. One suggestion is that parents taking their children out of the United States should pay a tax based on some portion of the value of the mother's passport.

The passports-for-sale scheme does not preclude the possibility of acts of compassion.

Alternatively, children under the age of say 10 years should be exempt from the scheme entirely. Children born in the United States would not be entitled to a passport until they have lived in the United States for 10 years.

THE PROFITS

The proposal offered here invites immediate comparison with the suggestion made by some that migrants from poor countries (LDCs, for less developed countries) to rich countries should pay a surcharge on their incomes in the host countries, the revenue from this tax to be channeled back to the LDCs as compensation for the loss that they have (arguably) suffered as a result of the emigration. But the passports-for-sale proposal would achieve the same objectives with fewer of the difficulties: compensating the poor country while providing some disincentive to skilled migrants.

The disincentive of the market scheme is that a new passport allowing a move to a rich country will be costly to acquire. In addition, however, the sending country will receive compensation, not in the form of government money, but in the form of new immigrants. The difficulties that poor countries at present experience in attracting and keeping skilled personnel will be significantly reduced. Under the present quota arrangements, the principal cost of acquiring US citizenship is that of waiting. Since this cost is minimal, there is every incentive for an LDC physician, for example, to apply for entry into a more prosperous country. Equally, there is no financial incentive for a physician in the latter to leave.

In addition, the free market solution has features that make it more attractive than a surcharge. It does not require international agreement. Any country could adopt the proposal unilaterally. It does not require a definition of which countries are poor and which rich. It would have the enormous economic advantage of increasing mobility. Passport brokers would exist. One could leave the United States for a few years, renting out one's passport, and return later. Poor families in LDCs could combine to send one member to the United States. Unemployed Americans could leave the United States for a few months or years and live in comfort overseas while their places were taken by others prepared to work at lower wages or skilled in other occupations.

It may be argued that this proposal is undesirable because it still discriminates against the poor, who could not afford entry into prosperous countries. It provides cold comfort to the huddled masses. Still, it is superior to existing arrangements. Further, it does not, of course, preclude the possibility of acts of compassion. Indeed, it makes them easier to achieve. Although the US government under the present system often remains unmoved by appeals for mercy, with a market in passports, the way is open for caring US citizens to purchase the salvation of foreign refugees. ◻

David Rees is a senior lecturer at the University of Cape Town in Rondesbosch, South Africa.

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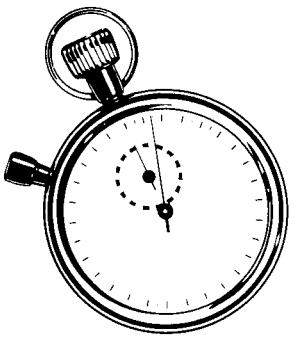

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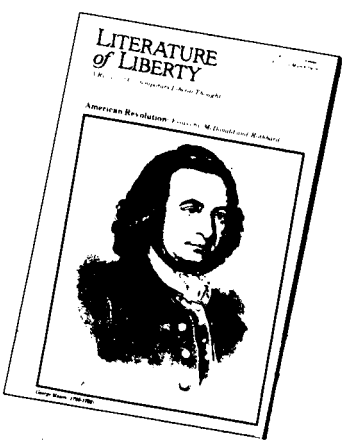

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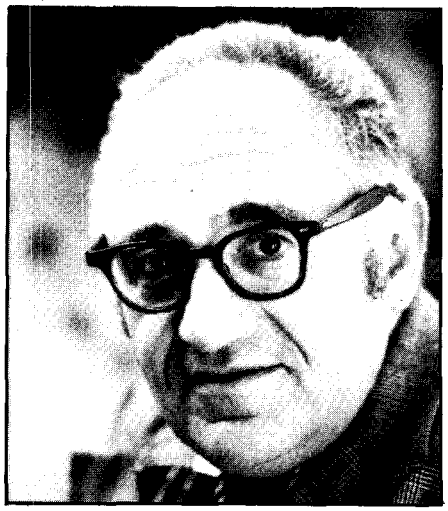
The Election: The Case for Pessimism

viewpoint



Murray N. Rothbard

The optimistic view of the election has already been spread by those with a vested interest in optimism (Reagan supporters and Clark propagandists): the Reagan election will usher in the triumph of low taxes and a free market, while the 900,000 votes for Ed Clark demonstrate strong libertarian sentiment among the public. Optimism grounded in facts is exhilarating; but optimism in the face of the facts begins to sound like puffery and charlatanism. Since I founded the case for libertarian optimism in the mid-1970s, I have a moral obligation to be the first to announce its demise.

During the latter part of the '70s, the case for libertarian optimism seemed strong. The public was fed up with Big Government (Watergate), high taxes (Prop. 13 and the tax rebellion), inflation, and foreign interventionism (Vietnam) and realized that victimless crime laws are unenforceable (the spread of marijuana, pornography, prostitution). Conditions seemed ripe for a libertarian triumph, and the Libertarian Party began to grow at the polls.

In the last year or two, however, conditions and public opinion have experienced a sea change. On foreign policy, the lessons of Vietnam have been forgotten, and the militarists and war hawks of the Committee for the Present Danger and the CIA "B Team" have triumphed across the board, among Democrats as well as Republicans. The tax rebellion has not been stopped completely, but it has certainly slowed down: witness the thundering defeat in June 1980 of Prop. 9 ("Jarvis II") in California, which would have cut the state income tax in half. And, in the last year, we have seen the remarkable onslaught of the fundamentalist Moral Majority, yearning for the return of theocracy and the outlawing of all such "anti-family" actions as abortion, pornography, and homosexuality and calling for "bringing God back into the public schools." It was inevitable that the preceding advance of feminism, abortion options, and gay rights should have created a backlash, but no one anticipated its fervor and strength.

If we consider not simply the Reagan landslide but the remarkable Republican triumph in the Senate, we cannot comfortably interpret the election as merely a repudiation of the incredibly inept Jimmy Carter. The election was a resounding triumph for the Conservative Revolution, which consists of three basic parts: (*a*) tax cuts and more of a free market; (*b*) increased militarism and an ultra-hawkish foreign policy, ever seeking confrontation with an atheistic and literally "Satanic" Soviet Union; (*c*) a theocratic Moral Majority reinstallation of God and the family and a crushing of the infidel. Only part *a* can be considered in any sense libertarian; parts *b* and *c* are quite the opposite. And, furthermore, it already looks as if we are in for a chilling return to suppression of dissent and the "unleashing" of the FBI, CIA, and other intelligence agencies.

As for the Libertarian Party, as Uncle Walter Cronkite said contemptuously but accurately on election night, "it was nowhere." After an unprecedented hype and a highly expensive campaign, it managed to corral only one percent of the vote. It is nowhere near its goal of becoming a third major party, especially if the Anderson party continues, as it threatens to do. And Barry Commoner did better on his first try than the Libertarians did four years ago. In California, the LP slid backward alarmingly, with Clark getting only 1.7 percent of the vote, far from the 5.5 percent he gained in the race for governor two years before.

But may we not at least take comfort from the free-market part of the Conservative Revolution? No, because that part of the revolution has already been thoroughly betrayed, even before the Reagan administration took office. As soon as Reagan was nominated, and Bush picked for vice-president, the gutsier and more radical economic advisers, such as Arthur Laffer, were unceremoniously thrown overboard, and in poured the same old Nixon-Ford crew of moderate Keynesians who brought us the inflation, the moderation (and even the wage-price controls!) of the Nixon-Ford years. The Burnses, Shultzes, Greenspans, Walkers, Weidenbaums, etc., have seized control. There will be no free-market revolution, no end to inflation, no balanced budget—just marginal tinkering with the status quo, as usual.

Libertarians can only take comfort from the likelihood that the other two major parts of the revolution have also been betrayed. There are already signs that the Moral Majoritarians are being shunted aside and that, in foreign as well as economic affairs, the hard-nosed ideologues and militants are being discarded on behalf of the oleaginous moderates and acolytes of the status quo. In this case, the war hawks are being shoved aside for the "realistic" spokesmen for the Trilateralists and the Rockefeller World Empire.

Okay; so it's far better to have our foreign policy run by more Metternichian Rockefeller-Kissinger types than by some fanatic who has lived for the day when diabolic communism can be nuked out of existence. But it is scarcely an optimistic state of affairs when we have to rely on the Rockefeller power elite to save the cause of liberty. For the hard truth is that the masses are no longer with us; for the time being, at least, they are conservatives, with all that that implies.

So—the optimistic hype is over. The quick victory model which the hyper-optimists have foisted upon us is seen to be nothing but a snare and a delusion. If liberty is ever to triumph, there is no substitute for patient education, for sticking to principles, and for life-long commitment. Libertarians had better wake up to this fact of life.

Murray Rothbard is a professor of economics at Brooklyn Polytechnic Institute of New York and the author of numerous articles and books on economics, history, and the libertarian movement.

health & welfare

Jet Lag, or How to Reset Your Internal Clocks

By Sandy Shaw and Durk Pearson

Circadian (24-hour) biological rhythms play an important part in human functioning and health. Scientists have only a very sketchy understanding of mechanisms controlling changes in biological rhythms as a result of traveling across time zones. But even at our present relatively crude levels of understanding, we know some causes of the most important phenomena and how to minimize some deleterious changes that can occur in long-distance travelers.

Acclimation to a new time zone doesn't happen instantly. In fact, most people require about one day at their destination for each one-hour time-zone change. Many large corporations forbid their executives to engage in the most critical of negotiations until this adaptation period is past. But what if you are flying between Los Angeles and New York and don't have three days to devote to the natural acclimation process?

Jet lag is a familiar phenomenon to many, if not most, frequent fliers. Waking up groggy or having a hard time getting to sleep, waking up frequently and finding it difficult to get back to sleep, and experiencing fatigue, depression, and inefficiency during the day are common. We have developed a way to prevent these symptoms in ourselves that is based upon a biochemical understanding of some of the day/night rhythms in the brain.

We know that sleep is induced by the release in the brain of the neurotransmitter serotonin (neurotransmitters are chemicals used by nerve cells to communicate with each other). The serotonin release cycle appears to be disrupted by a rapid change of time zones. Therefore, when we decide that we want to sleep (a decision that may be better made by logic than gut feelings under conditions of jet lag!), we take about two grams of the amino acid nutrient *tryptophan,* which in most people is rapidly converted to serotonin in the brain.

Since tryptophan has to compete with other aromatic amino acids to be transported into the brain through the finicky blood-brain barrier, best results occur when the tryptophan is taken alone and on an empty stomach immediately before going to bed. Exact dosage has to be individualized. It is helpful to take, at the same time, a 100 mg. supplement of *Vitamin B-6,* since B-6 is required for the conversion of the tryptophan to serotonin.

The time-shifted traveler often suffers from interrupted or restless sleep. The neurotransmitter acetylcholine plays a major part in controlling responsiveness to external stimuli as well as regulating nerve signals sent to muscles. In normal sleep, adequate acetylcholine is released to turn down response to the environment and to inhibit restless movements. These symptoms can be modified or eliminated in the insomniac traveler by taking the nutrient *choline* (which is converted by the brain into acetylcholine) before bed. A dose of three grams is reasonable. Since *Vitamin B-5* is required for the conversion of choline to acetylcholine, a supplement of 200 mg. of B-5 (pantothenic acid or calcium pantothenate) with the choline can produce superior results.

Some frequent travelers take Valium or Librium as sedatives to make it easier to sleep. Scientists have discovered that the brain receptors that respond to Valium and Librium also respond to the nutrients *niacinamide* and *inositol.* A gram of niacinamide and 3-10 grams of inositol before bed can be very helpful in producing drowsiness and sleep.

To increase alertness, motivation, and energy the next day, we often take a quantity of the amino acid nutrient *phenylalanine* early that day (or just before bed the night before). Phenylalanine, after transport into the brain, is converted into the neurotransmitter norepinephrine (the brain's version of adrenalin). This conversion requires *Vitamins C* and *B-6.* Norepinephrine is important for memory and learning as well as for primitive drives and emotions, long-term planning, and mood.

We invite questions of general interest from our readers. Send your query along to REASON Health & Welfare, Box 40105, Santa Barbara, CA 93103.

(A limited number of reader questions can be answered in print; personal replies cannot be made.)

Some popular stimulants, such as amphetamines and cocaine, cause the brain to release norepinephrine from its stores but, unfortunately, do not tell the brain to make more, eventually depleting the supply. Depletion of norepinephrine by excessive use of stimulants can result in severe depression. In one clinical study of people with various sorts of depression—including depression induced by amphetamine abuse, endogenous and schizophrenic depressions, etc.—most were entirely relieved of their depressions by taking 100-500 mg. of phenylalanine a day for two weeks.

Jet lag attenuation with phenylalanine is most important when flying from west to east. Doses have to be individualized. The dose required on the first night is generally larger than that required for chronic antidepressant use and is typically 250 mg. to 2 grams taken at lights out—not an hour earlier. (If you have high blood pressure, you should increase phenylalanine doses cautiously, while checking your blood pressure—some large doses can cause blood pressure elevation in a few susceptible individuals.)

The sensitivity of your nerves to norepinephrine is increased by several commonly used drugs, including *caffeine, theophylline* (in tea), *theobromine* (in cocoa), and, most selective of all, the prescription drug *Hydergine R* (Sandoz). These may be beneficially taken in the morning but probably should be avoided in the evening for travelers going from west to east.

Relieving the unpleasant symptoms of jet lag is more than just a matter of convenience, though, because we know that disrupted day/night neurotransmitter release patterns are hazardous to your health. When serotonin and norepinephrine release are disrupted, it affects the release of other important chemicals. Growth hormone is one of the most important. Without adequate growth hormone, the immune system does not function well. Since your immune system is your defense against viruses, bacteria, cancer, and atherosclerotic plaques, this is a serious matter. People who frequently travel long distances have been found to have higher rates of many illnesses, including cardiovascular disease and cancer, both of which largely result from inadequate immune-system surveillance.

There are a great many ways to stimulate the performance of the immune system with nutrients you can buy in any

health food store—but that will have to be the subject of another column. In the meantime, both serotonin and norepinephrine are important growth hormone releasers during sleep. Taking the nutrient supplements mentioned above to prevent jet lag should help prevent both serious disease and the near-ubiquitous minor illnesses that dog the jet-lagged traveler. Before embarking on your next trans-time-zone trip, stop by a vitamin shop and purchase the nutrients mentioned above, and see your physician for a Hydergine R prescription.

We follow our own advice; we now wake up alert the first morning in New York City after a good night's sleep, having left Los Angeles the day before. Due to our personal late-to-bed, late-to-rise sleeping habits, this involves a time shift of about six hours. Using the techniques described here, we both feel and perform better on the first morning than we did previously after three days of adaptation.

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References to this column are available. Send a stamped envelope to this publication and indicate the month of the column.

Sandy Shaw and Durk Pearson are consulting scientists, authors, and TV personalities.

taxes

What Will Reagan Do about Taxes?

By Timothy Condon

The aftershocks and reverberations from the "November Surprise" have settled. On January 20, the long-shot, conservative hero Ronald Reagan, formally became the 40th president of the United States. Now is the time to examine what this could mean for millions of hard-pressed American taxpayers.

Although Ronald Reagan speaks of the conservative ideal of "less government is best," it is just as certain that California tax collections—and spending—more than doubled during his tenure as governor. From a libertarian standpoint, his social stands were awful, and economic policies were mixed at best. Yet even so, the former California governor should be given his due: state bureaucracy growth was held to only 6 percent, when population increased by 11 percent; he returned $5.7 billion to California taxpayers with three different rebates, and he vetoed literally *hundreds* of proposed new laws.

One thing that Governor Reagan tried to do and *failed* on, however, may have made him a kind of father to the tax rebellion—Howard Jarvis notwithstanding. I'm talking about 1973, when Reagan initiated a titanic struggle with the spending lobbies, in a state with a spendthrift Democrat-controlled legislature. Proposition 1—a then-radical proposal to stop the growth of California income tax receipts and reduce them to a permanent, constitutional ceiling of no more than 7 percent of the aggregate earnings of Californians—went down to defeat, 54 to 46 percent.

The political in-fighting and hysterical denunciations were just as loud and insistent then as during the unreal Proposition 13 battle of 1978, with the difference that they worked. Postelection polls found that two-thirds of the people who voted against the tax-limitation proposal thought they were voting against higher taxes. In the years following, of course, state taxes exploded. And when the same techniques were used against Proposition 13, they failed, no doubt in part because the California electorate had already been "stung" once.

So, while Ronald Reagan is certainly no libertarian, he has in the past occasionally demonstrated healthy attitudes toward reducing taxation. No doubt this has something to do with his almost constant struggle with IRS harassment since the end of World War II, not to mention his experience of having been in the 91 percent tax bracket during the late 1940s.

But even so, the question is, Will he come through with meaningful tax reductions on the federal level while he is president? I am very guardedly optimistic. Here's why:

- The Kemp-Roth tax cut plan to reduce federal personal income taxes by 10 percent a year for three years in a row was a centerpiece of the Republican campaign. It is in the party platform. Tax reduction, along with inflation and national defense, was one of the overriding issues of the campaign. Now, people are watching, and waiting.
- People supporting the reduction in size and scope of the federal government surround Reagan. Their ideas pervaded his campaign. Jack Kemp, the New York congressman. Milton Friedman, free-market, Nobel Prize-winning economist and best-selling author. Thomas Sowell, free-market economist mentioned as a possible cabinet head. Lyn Nofziger, Reagan's press aide during the campaign. Outright, activist libertarians even held important positions on the transition staff, and Reagan is at least conversant with libertarian ideas.
- The new president has a long-standing hostility toward Social Security and the ever-rising taxes it forces from most workers. Although during his campaign he retreated on much of his criticism of the Social Security system, it is indeed true that in the past he suggested participation in the program could be made voluntary. Let's hope he remembers *that* one.
- After years of struggle to force Congress to either pass a balanced-budget amendment to the Constitution or call a constitutional convention for the purpose of drafting such an amendment, it may finally come to pass. While conservative Republicans have consistently supported a balanced-budget amendment, and polls have shown overwhelming public support (75 to 85 percent), Democratic statists have just as consistently controlled Congress and prevented the measure from even being debated. But *now* Republicans—overwhelmingly conservative—control the Senate. And a coalition of conservative Republicans and Democrats *can* control the House. I predict that a balanced-budget amendment will pass both Congress and the requisite number of states within the next four years.
- Lastly, and perhaps most importantly of all, taxpayer hostility and resistance to all forms of taxation are at the highest levels of this century. Radical tax-cut initiatives are proposed and qualified in every election now. Some of them pass, not to mention the timid and attention-diverting measures pushed by the incumbent powers, which almost *always* pass.

The subterranean economy, now conceded by many to equal ten percent of the economy—or about $250 billion—continues to grow. And some observers think the dimensions of such resistance could equal even as much as *half* the GNP. Reagan has come to office at a time when people seem to be demanding a sweeping reassessment of the entire government burden. His election is generally interpreted as being a mandate to take the necessary actions.

(Continued on p. 57.)

spotlight

Popular Scientists

By Sharon Presley

The most popular male draw in the history of the *Merv Griffin Show* has, on his dozen appearances there, never failed to point out the detrimental effects of government regulatory agencies like the FDA and DOE. But this man, Durk Pearson, is a research scientist, not a politico. Displaying a dazzling range of expertise on topics from anti-aging research to space colonization, Pearson has captivated millions of viewers with his disarming, riveting personality and his ability to translate complex scientific concepts into understandable lay terms.

Labeled a "scientific superstar" by *Playboy,* Pearson's popularity is not confined just to the *Griffin Show.* "Mind Food," an article on intelligence boosters and creativity expanders cowritten with his research scientist partner Sandy Shaw, is, according to *Omni* editor Ben Bova, "the most popular single article *Omni* has run in its first two years." Thousands of requests for reprints have poured in since its publication in May 1979. (Shaw and Pearson are now contributing editors of *Omni.*) Here, too, Shaw and Pearson point out the negative effects of the FDA. "FDA regulations block the adoption of many drugs that can raise your brainpower," reads the article. "It took one doctor we know over three months to get permission to read about one promising new intelligence drug."

Ideally, Pearson and Shaw would like to see the FDA eliminated, but in the interim, they have proposed one plausible measure to unblock the channels closed by present FDA regulations. "Make the FDA an advisory agency. Give their legal-staff money to the agency's scientists. Let the FDA have half the drug package insert to make its case and the drug company half to make *its* case. Then let the individual and his physician decide." According to Pearson and Shaw, every physician and scientist (and even one US senator) who has heard this suggestion has enthusiastically approved it.

It is no accident that Shaw and Pearson are acutely aware of the shortcomings of government solutions. Both have been libertarians since the early '60s. But they can and do back up their claims with scientific evidence. "Data slowly filtering out of pharmaceutical labs have made it clear," they write in "Mind Food," for example, "that current FDA regulations are blocking the development of valuable new drugs in many fields of research." The evidence for such claims can be found in the primary scientific literature cited in the bibliographies that always accompany their articles.

Pearson and Shaw hope people *will* read the primary sources. "We don't want people to trust us," says Shaw. "We want them to check for themselves." Consequently, they have an invariant rule for all their articles and media appearances: the publisher or producer must provide upon request a reading list prepared by Shaw and Pearson.

Durk Pearson

Sandy Shaw

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Independent judgment, they believe, is crucial for increasing control over one's life. "It's not just a matter of coercion by the bureaucrats," cautions Shaw. "You need to learn more about your body and its natural mechanisms. Increase a person's individual power over himself, not over others."

Showing people how and where to find information has another practical side. "Over 50 percent of the information in typical lay health books is bullshit," declares Pearson, "We want to show you how to separate the bullshit from the helpful information." One popular myth they cite is the idea that polyunsaturated fats help reduce the possibility of heart disease. In fact, they assert, anti-aging research shows that polyunsaturated fats are harmful to your health because they promote the formation of "free radicals," biochemical agents implicated in the body's aging process.

Working under grants from private foundations, Pearson and Shaw have themselves done extensive research on the aging process. The conclusions they draw from their own and other scientists' investigations will soon be made public in their forthcoming book, *Life Extension: a Practical Scientific Approach,* to be published by Warner Books this spring. The book will detail not only what scientists have discovered about slowing down or reversing the aging process but how you can actually make use of this information for yourself. Ultimately, Shaw and Pearson believe, it may be possible to eliminate death as well as taxes!

They have been testing these ideas on themselves since 1968. Each day they take nearly 40 grams of vitamins, minerals, and other nutrients that have proven efficacious for improving health or slowing down the aging process in lab experiments. "We've had literally hundreds of tests run to determine the effects of our programs," reports Pearson, "and so far, the results are all positive." Healthy-looking and trim at 37, Pearson says the tests indicate he has the cardiovascular system of someone half his age. Another sign of the efficacy of their regimen—they have serum cholesterol levels lower than teenagers, in spite of their high animal fat food preferences, a rare finding for people in their 30s.

Enumerating all this versatile duo's interests, accomplishments, and current projects would run to several pages, so I will add only their media efforts, which are especially exciting and impressive.

Black Holes: Monsters That Eat Space and Time, a TV science special produced by Walt Disney Educational Media Co., was the product of Pearson and Shaw's fertile imaginations. Aired in October 1979, the program was hosted and narrated by Pearson, with credits for the story, script, science advisors, special effects, and stunt designs going to both. A stunt showing actual free fall (by using a downwardly accelerating Learjet) was Shaw's brainchild—the first time real zero gravity has been used outside of aerospace. And it turned out that creating real zero gravity for their show was cheaper than faking it!

(Continued on p. 57.)

arts & letters

movies

- **Flash Gordon**
- **Resurrection**
- **Somewhere in Time**
- **The Glacier Fox**

Reviewed by John Hospers

• The latest version of **FLASH GORDON** can be enjoyed (somewhat) as "high camp." Viewed in any other way, it would probably be irrelevant to make such passing observations as that:

1. The aptitude for inane and stupid dialogue is shared by creatures from planets other than the Earth.

2. When an English-language film is shown in Italy or France, English titles have to be supplied. With space-creatures, fortunately there are no such difficulties. They understand every idiomatic nuance of our language at once; indeed, they speak in British accents. (Coincidentally, the film was made in Britain.)

3. True to the chivalric traditions of Earth, our hero goes to another planet in order to save his own. But when he is offered a choice between saving the entire Earth's population and keeping his lady, he chooses to keep the lady, whom he had met only a couple of days before at an airport.

4. It is gratifying to learn that even on other planets weddings are performed to the tune of the Wedding March from Act 3 of Wagner's *Lohengrin*.

• At first I thought that **RESURRECTION** was going to be, at long last, a cinematic treatment of Tolstoy's novel by that name. But it is a very modern film, set in Kansas and California, about a woman who discovers after a severe automobile accident that she has extraordinary powers to heal others. There are bits of telekinesis thrown in, along with post-mortem experiences followed by returning to life. Although one cannot vouch for the authenticity of any of it, the theme is treated with seriousness and dignity and is absorbing throughout.

The film is an unusual melange of characteristics. Some of the transitions are a bit awkward, and some parts of the script are somewhat wooden. Yet the unusual theme of the picture exerts a continuous fascination. Life in the Kansas heartland is depicted with affection, though also with unsparing realism. The actresses playing the two major roles are nothing short of magnificent. Ellen Burstyn as the healer is better than she's ever been, and Eva Le Gallienne as the ancient grandmother deserves an Academy Award. Every facial expression and gesture is so vibrantly authentic that her performance is a perfect example of "living the part down to one's fingertips."

Probably the finest theatrical performance I have ever seen was of Eva Le Gallienne some years ago as Queen Elizabeth in Schiller's superb play *Mary Stuart*. Those who are not patrons of the theater have missed much by not seeing her in her many unforgettable performances. But it is gratifying to report that old age has not caused her to lose her touch.

• The film proceeds smoothly and with a kind of quiet dignity, with never a lapse in atmosphere or taste such as would have destroyed it in an instant. Though it is a tender and passionate love story, the final response to **SOMEWHERE IN TIME** is that of a pervasive, gnawing sadness, which is difficult to account for at first.

Stories involving time warps strike a peculiar emotional chord in most viewers. In 1972 an old woman whom he (Christopher Reeves) has no memory of ever having seen quietly slips him a note saying, "Come back to me." Eight years later, after her death, when he is trying to write a play, he sees a picture of the same woman when young; if only he could go back in time to that period, 1912. With a unique type of effort, explained to him by his philosophy professor (of all people), he lies unconscious on his hotel bed while at the same time he (the same he, presumably) "returns" to 1912, while yet knowing, from his library research on the period, what is going to happen after 1912. In spite of this, returning to that year, he exerts a causal influence on happenings then, as a result of his 1980 decision to "go back in time." Had he not made the decision in 1980, his visit to 1912 would not have occurred and her life in 1912 would have been different. (What if one could go back in time and keep one's own parents from meeting?) Yet while he is "in 1912" he has his memories from 1980 and, knowing what will happen, lets slip bits of information not yet known to anyone else.

So far, there is only an interesting story based on a flimsy metaphysical foundation. Why then does the film evoke such sadness? It is, I think, the conviction that settles upon one that the future is already set in concrete—that even in the present the totality of one's future is predetermined: not in the mild sense called "determinism," in which one's future can be carved out partly by and through oneself, but in the strong sense called "fatalism," in which the future is already set regardless of what one may do; that freedom is an illusion, and all one's life is simply "going through the motions," like a puppet, though unbeknownst to oneself. So persuasively does the film involve us in that world that, for the moment, we come to share its (false) premises, giving us a feeling of helplessness that triggers the sadness.

• It is not only in quality of car production that Japan has come to outperform the United States. Filmed in the northernmost Japanese island of Hokkaido, **THE GLACIER FOX** contains no human beings at all, but it contains many memorable scenes of the northern wilderness from one season to the next, and in particular the daily life of a family of glacier foxes. In the dunes bordering the Sea of Okhotsk, two foxes meet and find a place to rear their young. We see the family life of the parent foxes and their four young pups and follow them closely through their first year of life: the careful rearing of the young, the finding of food, and the many day-to-day incidents of family life. Later we see the mother fox caught and killed in a trap and the father rearing the young pups and preparing them for independence and some months later ejecting them from their parental home and sending them each on their way to find their own prey and their own mates. In the end all the foxes but one are killed by man, and the closing shot is of the area where we saw the little ones play together and confront the world for the first time, all empty now because human life has replaced animal life on that part of the island, and the humans allowed no room for the animals.

It's not the usual Disney-style animal story in which no actual cruelty is shown on the screen. The detailed exhibition of the family life of foxes, and the carefree grace and beauty of the young pups, lead us to identify strongly with the animals. We see the world totally from their point

of view, with man as the enemy who finally kills off the animal life with traps and guns. Just as in the excellent American documentary of a few years ago, *Wolves and Wolf-men,* we are shown in detail the "highly evolved" behavior of the animal family, how they pose no threat to man, and how they have (as it were) "nobler souls" than most men; we want to kill anyone who harms them.

The only ingredients that don't fit were added by Hollywood: a raucous sound track and the somewhat raspy and whining voice of the old man who is the off-screen narrator. If you can watch the film while using ear-plugs, you will find it a gratifying and solemnly moving experience.

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books

What to Do About Money

The Coming Currency Collapse.
By Jerome F. Smith.
New York: Books in Focus. 1980. 205 pp. $12.95.

Reviewed by Joe Cobb

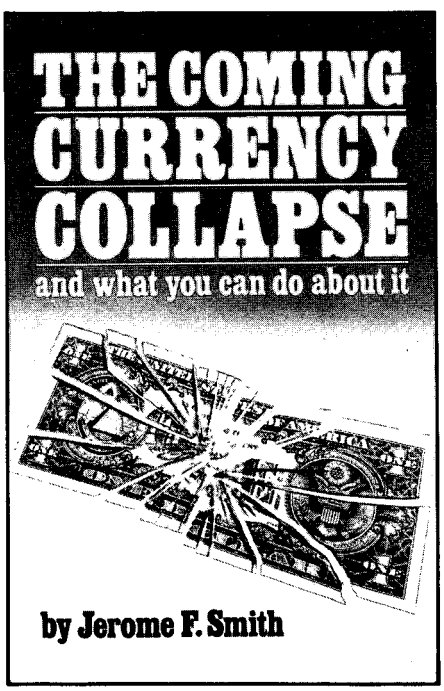
If you haven't recently read one of the classic free-market books on money, business cycles, inflation, and how to protect yourself from future disasters, get this book! It will give you the complete picture of what money is, where it comes from, how banks work, and what goes wrong with the capitalist system when governments mess with the money and credit process; it is all described in this book. Jerome Smith does a good job of exposition, and he keeps it short.

His presentation of the Austrian theory of the business cycle, for example, is simple and straightforward. There is no reason why every person in the business world shouldn't understand this complex process—even those doers and achievers who don't have time to spend on books. If you haven't read a book on the economics of inflation and depression, this is a good one.

If you *have* studied the books of Ludwig von Mises, F. A. Hayek, Murray Rothbard, or Hans Sennholz, however, Jerome Smith's *The Coming Currency Collapse* won't teach you anything new. I won't claim that the senior pro-gold members of the economics profession are smarter or better to read than Jerome Smith, because he is an excellent writer and explains the same ideas in a smooth, easy-to-digest style. But there is not very much new in his analysis.

He does give one definition that I think is new and may well be a step forward in the analysis of money. His universal definition, that "money is the most liquid form of capital," is an insightful denotation that includes everything that the free market might use. The electronic bits of computer credit systems, the bookkeeping ciphers of demand deposits, gold coins, trade credit, or anything that the businessman may invent can meet this definition. And yet, like a good definition, it excludes anything that is not "liquid" and anything that is not future-oriented in its utility to you, as "capital." This last part of the definition is very important.

Just as his definition of money could not include real estate, because it is not liquid, so too at the other limit it cannot include a rapidly depreciating fiat-money, like the French assignat or the 1923 Reichsmark. The US dollar and the pound sterling are still "money" by this definition; but a little more acceleration in their loss of value, and people would stop using them for financial purposes. They would collapse, as the title of this book suggests. If you were an academic economist, like Milton Friedman, who doesn't accept any definition that he can't use for statistical purposes, you may need to stick with M-1B or the Monetary Base as your definition of "money." But Jerome Smith's definition would be more useful to you if you are looking for a guide to investment or savings opportunities—ways to preserve and increase your capital—even though it lacks statistical tidiness.



The weakest part of the book is in Smith's discussion of the banking system. He follows the popular tradition of viewing fractional-reserve banking as sort of fraudulent. This is too bad, because his definition of money makes it clear that bankers are just in the "liquifaction" business and that, without the government's control of *the name and definition* of the monetary unit ("dollar," "pound," "franc"), private commercial banks would not themselves be either a cause or an accessory to inflation. Only the process of having the Federal Reserve Banks, or the central banks of other governments, expand the supply of liquid government debt (bills and cash notes) brings us inflation. Jerome Smith's definition of money, with his explanation of the business cycle, makes clear *how* they do this—by increasing the nominal capital of the society without augmenting any real investment, financed by real savings.

The fact that Smith does not notice that his definition of money renders his discussion of fractional-reserve banking a little bit awkward, however, doesn't prevent an excellent discussion of the business cycle in his next chapter. Indeed, it becomes clear that if the Reagan administration really hopes to end inflation and avoid the "coming currency collapse," a lot of debt-holders and welfare-entitlement stakeholders in our society are going to get burned. He has some advice for his readers on how to avoid the flames.

He advocates an ultimate separation of money and the State: a true *laissez-faire,* choice-in-currency, private monetary system along the lines of F. A. Hayek's proposal (see my review in the Jan. 1977 REASON). I wish that he had included one additional section that might have discussed a possible *noncatastrophic* transition from our present, government-polluted monetary system to one based on private financial capital. At issue are questions like: Will the public debt be repudiated (as "dollars" become worthless)? Will tort judgments be awarded in gold coins, or something else? And would units of accounting be "grams" or "ounces"? Little questions like that can be very important in the new, free-market monetary system.

Jerome Smith has earned his reputation as an investment advisor, of course, and his book is a bestseller because of its promise to make you rich—or help you survive the disaster that its title decries. If you have subscribed to one of the popular gold-and-silver or inflation-survival newsletters (including Jerome Smith's own *World Market Perspective*) in the past few years, you won't find much in this book that you haven't read before. If you have

wondered about such newsletters, however, but haven't shelled out the $96.00 (or more) per year, *The Coming Currency Collapse* is an excellent reference book for understanding why savings accounts, for example, or whole-life insurance are a bad way to prepare for retirement. If you need a primer in monetary economics—and most people do—Jerome Smith's book is for you. If you don't need it, this book should be bestowed on your parents, friends, or children as an April 15 (Tax Day) gift.

Smith closes the book with the cry: "If you can't join them [the ones who feast upon your wealth and savings], beat them. Join the new American revolution." I should only add that even if you could join them, you will feel better about it if you beat them. Or, in the short run, do it for personal profit; in the long run, do it for human rights and liberty. Jerome Smith has produced a good educational weapon for that struggle.

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The Rich Tradition of Political Economy

Moral Revolution and Economic Science.
By Ellen Frankel Paul.
New York: Greenwood Press. 1979.
309 pp. $25.00.

Reviewed by Craig Bolton

Ellen Paul concerns herself in this book with some of the most important British intellects of the 18th and 19th centuries. Adam Smith, David Ricardo, Jeremy Bentham, J.S. Mill and Henry Sidgwick: these are the men who synthesized, systematized, and ultimately destroyed classical liberalism.

While many of the classical liberals wrote essays and treatises dealing with pure political theory or political philosophy, the bulk of their influential work was in political economy. Political economy rests upon an understanding of fundamental economic principles, but it is not the same as the technological economics that arose in the Anglo-American world of the early 20th century. Political economy is essentially the study of practical political and economic organization. It is primarily concerned with what can be and what most likely will be, not with the investigation of what should be "absolutely" or regardless of circumstance. Even so, the political economist does make judgments of "better" or "worse," and these judgments, although often implicit, are just as often decisive in his conclusions.

In the last 50 years there have been numerous studies of the political economy of Karl Marx, Thorstein Veblen, and John Kenneth Galbraith, but there have been no significant, comprehensive, and coherent contributions to an assessment of the political economy of the late liberal classical economists. Historians of economics, in a misplaced concern with positivist research, have too frequently ignored the political economy of the classicals. Alternatively, popularizers of intellectual history have rendered sweeping and uninformed verdicts on the classicals' political views—verdicts that they have derived mainly from our contemporary collectivist passions.

Ellen Paul's *Moral Revolution and Economic Science* provides an excellent tonic to the abusive and often trivialized treatment accorded the founders of classical political economy. Her prose is lucid, her selection of individuals is well informed, and her portrayal of the doctrines, methods, and intents of the classical and early neo-classical political economists is both thorough and accurate.

While these merits are sufficient to recommend this volume to anyone with a spark of intellectual curiosity, they are not the features that Paul intends as the strengths of her work. It is clear that her main inquiry is directed toward an exploration of the reasons for "the demise of laissez-faire in Nineteenth Century British political economy." In solution to this puzzle the author has a definite, if debatable, thesis. Laissez-faire died—or, more accurately, was gradually abandoned—because its main supporters (the post-Smithian British classicals) adopted utilitarian moral criteria in place of the natural rights or natural law ethic upheld by their immediate predecessors.

It is an interesting historical thesis, and, from the perspective of the particular events in 19th-century Britain, Paul seems to have much evidence on her side. From a purely logical perspective, however, and from the historical evidence of other times and places, it is clear that opposition to or support for laissez-faire has no necessary connection with the debate between naturalists and utilitarians. During the 19th century itself, for instance, most continental intellectuals were committed to absolutist notions of right and law, regardless of their disagreements concerning laissez-faire or collectivism.

Despite any deficiencies in her central argument, two of the author's more minor themes fare better. It is probably true that the attempt, during the mid-19th century, to transform political economy into a value-free economics was both premature and destructive of what remained of the ability of political economists to combat creeping collectivism. Similarly, it is quite true that the anti-naturalism of Bentham became, in the hands of J.S. Mill and the later utilitarians, a convenient excuse for introducing social experiments in support of their own preconceived, if implicit, notions of moral virtue.

Neither of these propositions, however, justifies any belief in the inability of convinced collectivists to neutralize, subvert, or overthrow a laissez-faire order without the aid of utilitarian ethics. It is notable that many prominent collectivist figures and movements of the same period—for example, Thomas Carlyle, the English followers of French phalangists or Comtists, and the Christian Socialists of Cambridge—were at the same time strong believers in ethical absolutism and rabid opponents of political economy and laissez-faire. As Professor Paul herself maintains, the major determinant of political policy is the *content* of ethical ideas about what should be done socially. Whether these ideas are derived from "utility," "the will of God," or "intuitive insight" is never very important in the ultimate formulation of public policy.

Despite these quibbles with some of Paul's themes, one cannot help but appreciate the significance of her overall achievement. Her volume is mandatory reading for those who wish to understand more fully the origins of present-day reasoning about practical social organization. Moreover, it is a major contribution to our understanding of the recent history of freedom and of the path that we have traveled away from its ultimate achievement.

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Speaking of Liberty

Liberty and Language.
By Geoffrey Sampson.
New York: Oxford University Press.
1979. 262 pp. $17.95.

Reviewed by Geoffrey Nathan

Although scientists with a libertarian orientation are becoming more and more common these days, it is always a pleasant surprise to find one in one's own field. Geoffrey Sampson does theoretical linguistics, a relatively new discipline and

one that is not well known outside the university (and often even within it). Linguistics is the scientific study of language—language as a human characteristic and as a human activity. Although it employs concepts from sociology, psychology, anthropology, and even physics and physiology, it has also developed its own complete conceptual structure and a number of competing theories.

The founder of what is perhaps the most widely accepted linguistic theory today, transformational grammar, is Noam Chomsky, a professor of linguistics at the Massachusetts Institute of Technology and an outspoken, activist member of what used to be called the New Left (he was on Nixon's "enemies list"). Chomsky is a socialist anarchist, and what is unusual about his political beliefs is that he claims that they flow out of his discoveries about the nature of human language. Sampson's purpose in *Liberty and Language* is to show that Chomsky's view of language, to the extent that it is correct, supports a libertarian rather than socialist political arrangement.

Sampson is English, and he espouses a set of views that he identifies as liberalism. It is clear that he means the set of beliefs that in the United States have come to be called libertarian. As intellectual support for his position, he cites Karl Popper and F.A. Hayek exclusively (an unfortunate lapse, as we shall see).

Chomsky's philosophical position is rationalism. He believes that much of our knowledge of the world is innate—provided not by divine gift but through evolution. In particular, he claims that the nature of human language is entirely determined by built-in structures of the mind that are present at birth. The evidence for this, Chomsky (and Sampson) claims, is that the grammars of all languages, no matter how different the languages, share certain fundamental characteristics that are not logically necessary but nevertheless turn out to be universal. From this fact, Chomsky concludes that the rationalists were right all along that the human mind is equipped with structures for understanding the world.

Since empiricism—the view that all our knowledge is gained by experience—is the fundamental philosophy of liberalism (libertarianism), says Chomsky, that must also be wrong. He virtually equates behaviorism with empiricism and goes on to claim that empiricism leads necessarily to totalitarianism: "If in fact man is an indefinitely malleable, completely plastic being, with no innate structures of mind and no intrinsic needs of a cultural or social character, then he is a fit subject for the 'shaping of behavior' by the state authority, the corporate manager, the technocrat, or the central committee" (Chomsky, *For Reasons of State,* p. 184).

But are extreme empiricism or extreme rationalism the only alternatives? Of course not. Sampson shows not only that empiricism does not require behaviorism but also that Chomsky's particular brand of nativism is very likely to be fodder for racism and imperialism of the worst sort. If most of what we consider to be intelligence is inherited, as Chomsky believes it to be, then, like all other genetic characteristics, it is likely to vary among racial groups, giving additional scientific credibility to all sorts of possible racist mischief. Sampson himself believes the claim that blacks are, on the average, less intelligent than whites (and also that orientals are more intelligent). He also makes the correct observation that such facts are interesting but ought to have no consequences for public policy.

If the government owns the means of production, it owns the printing presses and all other means of disseminating ideas.

After pointing out that Chomsky's rationalism cannot be used to defend the kind of political system that he advocates, Sampson goes on to the most interesting part of the book—a demonstration that the nature of language itself provides strong evidence for the necessity of a libertarian society. Sampson's argument rests on the fact that human beings are ignorant, that they are continually discovering new facts about the world and inventing new theories to explain them. Such theories achieve acceptance through what amounts to a marketplace of ideas, which can only exist in a society organized along libertarian lines, where each idea is free to compete for the loyalties of everyone involved. Sampson then shows that intellectual freedom is impossible unless it exists in a matrix of *economic* laissez-faire as well. If the government owns the means of production, it owns the printing presses and all other means of disseminating ideas.

Coupled with the inherent ignorance of human beings is their ability to be creative, to think of things in a new way and to use their language to express those innovations. As the vehicle for human creativity, language allows us to state concepts that were previously inconceivable. Sampson cites the example of the following (now) true statement: "The elements of which water is composed burn furiously." Three hundred years ago, when water *was* one of the elements, this statement was nonsensical. Now it makes perfect sense. It is the very flexibility and creativity of language that makes possible the kind of scientific, philosophical, and even artistic exploration that human beings depend on to survive.

While the argumentation is intriguing and the book develops many new ideas, it does have some drawbacks. First, because Sampson relies exclusively on Hayek and Popper, he is led to some very unlibertarian conclusions. He believes that trade unions should be outlawed because they are monopolistic and one of the functions of government is to limit monopolistic trade practices. Readers of this publication can easily write their own disproofs of that claim. Second, he has a very interesting view of classical imperialism: he is in favor of it. He believes that free countries have the right to administer foreign lands if those lands were previously run by authoritarian native leaders. "If a nation, because of its cultural traditions, has no serious chance of [developing] a liberal government from within itself, then it is far better for that nation to be governed liberally by aliens than to suffer authoritarian government by its own nationals."

While this argument will no doubt be repugnant to many American libertarians, especially those espousing total nonintervention, it would be beneficial for all of us to take a good look at his claim. Is self-determination really an ideal equal in status to that of free trade and freedom from government interference in the lives of its citizens? For example, would an independent, but socialist Quebec be a better place to live than a "colonial" but capitalistic province of Canada? And whatever the answer, what are its implications for free countries? These are questions that deserve more careful study than libertarians have recently been willing to give them.

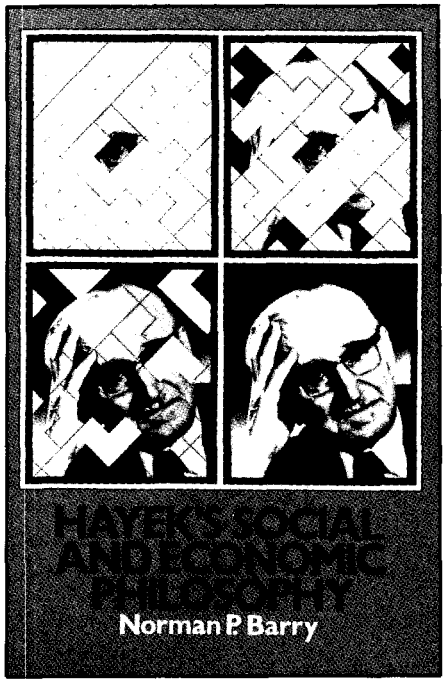
I would recommend this book for a number of reasons. First, because it is likely to be read by nonlibertarian linguists (as a linguist myself I can attest to the fact that they are in the vast majority). Second, because it contains some very interesting and original ideas on the nature of rationalism and empiricism and the question of innate ideas. As a brief for libertarianism it is not terribly good—Rand, Rothbard, even Nozick, are better introductions. As a scientific argument, however, put forward by a person relying on results in his own, relatively unknown field, it is a valuable contribution to the literature of liberty and contains much food for discussion.

Geoffrey S. Nathan is a professor of linguistics at the Southern Illinois University at Carbondale.

Interpreting Hayek

Hayek's Social and Economic Philosophy.
By Norman P. Barry.
London: Macmillan. 1979. 228 pp.
£12.00.
New York: Humanities Press. 1980. 228 pp. $30.00.

Reviewed by Arthur Shenfield



It is fortunate that F. A. Hayek began his scholarly life as an economist. In the past four decades he has most fruitfully cultivated fields—the fundamentals of legal, political, and social theory—that few modern economists dare to approach with more than occasional and glancing observations. Yet it was economics that first and most surely gave him the insights leading to his exposition, almost unique in its coherence and consistency, of the ideas, true and false, that shape our legal, political, and social institutions.

From the catallaxy (that is, the market), his perceptive eye moved to the society as a whole and found the same truths and errors at work, but it was easier to understand them first in the catallaxy. Smith's invisible hand (the coordination by the market of discrete pieces of knowledge dispersed among innumerable individuals) displayed both the vital fact of the limited character of each person's knowledge and the possibility of the emergence of an order without central direction. Ferguson's illumination of the development of institutions from human action without design stretched the view from the catallaxy to custom and law in society and exposed the fundamental difference between evolutionary and constructivist rationalism, as Hayek calls them. The best work of the classical and Austrian economists showed that the essence of a catallaxy, and hence of the Great Society arising from the catallaxy, was a system of rules, not orders. Once grasped, the principle of a society of rules, as distinct from orders, liberated the mind from the superstitions of scientism, which led men to apply the methods of the natural sciences to the phenomena of society and to attempt to measure the unmeasurable. All this has given Hayek's work, stretching from the 1920s to the present time, a breadth and depth surely unmatched in this century.

Hence it was time for an attempt at an overview and critique of the whole of Hayek's work, the coherence of which lends itself to such an exercise. Norman Barry's attempt is in my opinion a conspicuous success. It is careful and thorough to a degree, comprehensive (except that it was written before the publication of the third volume in the *Law, Legislation and Liberty* trilogy), and for the most part notably fair and perceptive in its judgments. It is informed by a wide reading of the relevant literature. In short, it is an admirable contribution to what we may expect to become known as Hayekian scholarship.

If there are blemishes and misunderstandings in Barry's essay, perhaps the following is a fair catalog of them:

- Contrary to Barry, Hayek's thesis of our ignorance does not prove too much (p. 11). Limits on individual knowledge do not make planning by the rule-enforcing body *of enforcement measures* irrational, as long as it is truly restricted to this function and eschews attempts to plan the economy. To plan the police force, for example, is then no more or no less difficult, and no less rational, than the planning by a company of its business affairs.
- Suppose that property were dispersed among a number of public authorities and subject to strict rules of transmission and management. Barry opines that this would satisfy Hayek's criteria for freedom and yet exclude private ownership (p. 63). Surely not. For if the rules proscribed private ownership, they would ipso facto impinge upon freedom. The mistake here arises from an incorrect deduction from Hayek's correct statement that in a free society even the propertyless have freedom.
- Hayek knows very well that Bentham and Rousseau differed sharply from each other in certain respects and that much of Bentham's influence could accord with the needs of a free society (pp. 63-64). He puts them in the same column because they were both constructivist rationalists and to that extent both authors and generators of grave errors.
- It is true that many libertarians would not object to a closed shop, *if it is freely agreed to by the employer* (p. 74-75). But this does not necessarily undermine the logic of Hayek's objection to the legal enforceablilty of such agreements. There are not a few agreements that on grounds of public policy are unenforceable, though not unlawful. To assail Hayek on this point needs further and deeper analysis. In practice, closed-shop agreements reached without a trace of a fear or threat of union violence hardly exist, but admittedly this is not the substance of Hayek's argument.
- Contrary to Barry, socialism and central planning would inevitably run counter to the Rule of Law even if the authorities attempted to subordinate all other considerations to a system of general rules (p. 110).
- It is a superstitious, though widespread, belief that "tax concessions" to owner-occupiers are real concessions and therefore comparable to subsidies to tenants, and Hayek ought not to be criticized on this point (p. 118). They only look like concessions because in an age of inflation the owner-occupier can charge mortgage interest against tax (which in principle is no concession but an entirely proper element in the computation of taxable income), while his mortgaged asset is rising in value.
- It is surely stretching the truth to say that a Hayekian society and a Rawlsian society would in practice resemble each other (p. 143-147). Barry correctly notes that Rawls's principles would in essence run directly counter to Hayek's. He sees a resemblance in their end-state because in Hayek's free society the poor—indeed, especially the poor—are uplifted, though not by design. However, not all the poor, which is why Hayek admits the debatable necessity of State aid to the poor (as long as it is free from any general aim to redistribute incomes or wealth in the interest of equality).
- It is a pity that Barry describes Hayek's *Road to Serfdom* as his notorious book. *Famous* would be better chosen.

Nevertheless there are no doubt dubious features of the Hayekian system that Barry does well to expose. Witness the test of survival and increase of population for the purpose of judgment on the development of custom, law, and other social institutions. Witness the surely too rough-and-ready test of price discrimination to distinguish between the sheep and the goats among monopolies. Witness the blessing, though qualified, given to State subsidies to the arts (see here Ludwig von

Mises's famous—or notorious—exception in favor of the Vienna Opera!).

But at 81, Hayek is still writing. His next book is not yet before us. His last word has not yet been uttered.

Arthur Shenfield is an economist and barrister at law. He has served as president of the Mont Pelerin Society, 1972-74.

letters

(Continued from p. 8.)

ought to be killed before they hurt themselves or somebody else.

The Van Norman Dam episode was a media event, with telecopters swooping low for shots of the surface cracks and minicam crews obtaining statements of Grave Concern by Our Public Officials. The only serious damage in the 1971 quake was the fatal collapse of a government hospital. The Van Norman Dam was as far from a catastrophic failure as the Three Mile Island reactor was from melting its way to China.

Moral: The power of political propaganda is so great that even those engaged in debunking it fall into it.

Advice: Shush-up the Van Norman nondisaster. If Johnny Gofman hears about it, he'll try to ban water.

J.G. Krol
Anaheim, CA

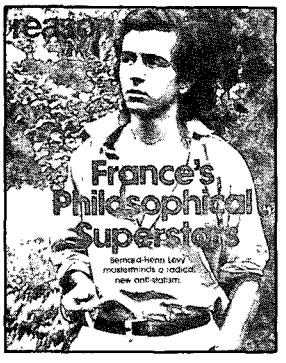
Nuclear Confusion

Guccione's letter to the editor on nuclear insurance costs (Nov.) has provided hours of perplexity and conversation for me. I still cannot figure out whether Bethe's figures are quoted accurately in the letter and Guccione is intending to expose specious reasoning of a nuclear advocate or whether there are several typographical errors that confused the numbers that Guccione was presenting as reasonable alternative to the Price-Anderson "solution."

The way it is printed, it looks as if Bethe said that there is one chance in a thousand years for a nuclear accident happening, and since there are 100 nuclear power plants, this makes one chance in 100,000 years. Actually, if there is one chance in 1,000 at one plant, the chance of an accident at one of 100 plants would be one in ten years. Therefore, I wondered if perhaps those two numbers had been reversed and he actually intended to say that the accident at one plant is one in 100,000 years, so that the risk for 100 plants would be one in 1,000 years. This would make sense out of the statement that the risk for one year would be 10 million dollars if the cost of an accident would be 10 billion, because obviously 10 million dollars is 1/1,000 of 10 billion dollars. Although he does not so state, I believe he then intended this 10 million dollars to be split among the 100 companies so that each company would be paying $100,000 annual premium. This might make sense of the whole pyramid of calculations.

Would you kindly publish a clarification as to: 1) what the correct intended figures were and 2) why only property liability is taken into account when, if automobile insurance is any worthwhile analogy, the major cost of insurance will be human liability. Even if we presume a successful evacuation prior to the big bang, there would at least be living expenses, and reimbursement for the psychological trauma of having your home vaporized and your life disrupted. Remember that since the Buffalo Creek disaster there is now legal precedent for liability for psychological trauma as well

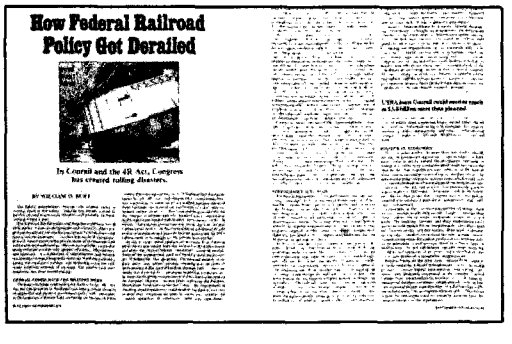
Have You Seen...



REASON's coverage of the Railroad Reform Act of 1976?

September 1978 $2.00

The Railroad Revitalization and Regulatory Reform Act of 1976 was hailed as much needed deregulation. But, as author William Burt quite thoroughly demonstrates, instead of reorganizing bankrupt railroads and easing regulation, the 4R Act quickly fizzled after some cosmetic reform and a lot of big spending. Also in the issue: the exciting story of France's ex-Maoist "new philosophers," a look at three 19th century voluntarist anarchists, and two articles on the regulatory assaults on the First Amendment and on small business. Plus columns on the tax revolt by Murray Rothbard and Tim Condon.



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as physical injury, and I suspect that any jury would be rather generous with psychological victims of nuclear power plant accident. Two other questions: Do the figures take inflation into account? And what about the administrative costs, which must surely be greater for a government administered program than for a privately administered one.?

On another topic, I would like to add my voice to those of Joseph Martino, Christopher Graves, and others who believe in the compatibility and even complementarity of Libertarianism and Christian ideals. A set of beliefs should be judged by its core principles, not by the misguided excesses of some of the professed adherents.

L. Eugene Arnold
Columbus, OH

Gold vs. Spending

The "economists" who want to return to the gold standard (Trends, Nov.), claiming that it will benefit us, first have to figure out how to halt the printing of waste-paper money. As long as that is continued, people will buy away the gold leaving only the junk, per Say's Law ("Bad money drives out good"). When they can stop the money-printing, a stabilized currency will do everything the gold standard does.

They are trying to do magic without a wand. The problem is not money. It is massive spending that drains the economy. Cut government spending, and balancing the money will be easy.

Thomas S. Booz
Plantation, FL

Ed Clark and the Soviets

In addition to supporting certain statist measures such as the Equal Rights Amendment and the Environmental Protection Agency, this year's Libertarian Party presidential candidate, Ed Clark (Nov.), also failed to put forth a consistent Libertarian position in the area of foreign policy and defense. For example, he supported the SALT treaties with the USSR and, after that, a nuclear test ban treaty. Based on the history of past dealings with the Soviets, I do not see how a real Libertarian can advocate that we make treaties with this gang in the Kremlin. Ed Clark should know better.

If you are powerful enough to enforce the terms of the treaty which you want kept, then you don't need a treaty. If you are not strong enough to enforce the provisions that you want upheld, then a piece of paper signed with our sworn enemies will not make them observe the agreement. Treaties with the Soviet Union are not likely to reduce nuclear arsenals (unfortunately) nor stop nuclear weapon proliferation. It would be nice if it were that simple. Signing a treaty with an enemy who is not trustworthy is false security and represents a decidedly false remedy to the awesome problem of the threat of global war and annihilation. Peace through strength is the rational alternative.

Sam Wells
Los Alamitos, CA

Back to Basics?

When will REASON provide us with a writer on education who understands the relationship between and the application of freedom to learning? Why do you con-

rudebarbs

Randall K. Hylkema

THE EVIDENCE!
DOGGY BAG
FEEDING YOUR KIDS AT HOME, EH?!
LITTLE JASON JUST WASN'T RECEIVING ENOUGH CULINARY STIMULATION AT OAK GROVE PUBLIC ELEMENTARY TROUGH.
I SEE YOU DON'T EVEN HAVE STATE KID FEEDING CREDENTIALS.
BRIEF
NEXT YOU'LL BE TEACHING HIM AT HOME, TOO, I SUPPOSE?!
NO! NOT THAT!
WE EVEN USE THE U.S. MAIL!
WELL, I GUESS YOU'RE NOT RADICALS... SENTENCE SUSPENDED.
EL SUPREMO

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tinue to subject your readers to the conservative, authoritarian, chauvinistic views of Louis Segesvary? His review of Postman's *Teaching As A Conserving Activity* (Dec.) reveals once more that he holds such concepts and practices as curricula which "reflect the students' needs and interests," "student directed education," and schooling which is concerned with the "whole child" as being responsible for "vast numbers of educationally impaired young people." Conversely, he apparently approves of "more traditional forms of education" which will condition students for "survival in our society" and which "prepares them to be competent and productive members of society."

Traditional education, especially public education, has always had as its principal goal the socialization of the individual to render him/her useful to, or at least not a challenge to, society (i.e., those in power). The object has been to create look-alike, sound-alike nonthinkers who won't rock the boat. The "back to basics" that Segesvary implicitly supports is nothing more than a euphemism for control over young minds by a power structure (government and/or academic) that sees only heads to be filled with what *it* considers to be of value. It does not see individuals who are to be helped to develop *as individuals.*

The new education that Segesvary so despises is a strawman; it never happened in public schools (and in most private schools) for several reasons: 1) It was never tried at all except in a few isolated instances; 2) It was not applied by people who understood its nature or were trained to implement it; and, 3) Applications were temporary and inconsistent.

What has happened by and large—and Segesvary sees this as being student-centered—is that educators and their teacher-goons have replaced one model of student conformity with another. The only real change in education in the last twenty years or so has been in rising expectations and consequent disillusionment. The disillusionment has not been that freedom hasn't worked, except in the minds of chauvinists like Segesvary, but that it hasn't been tried. The solution to falling performance levels in education is not a return to traditional authoritarianism for the benefit of the power structure. The solution is to actually deliver student-centered, whole-child assistance to learning, to *allow* minds and bodies to develop free and freely. This almost certainly can't be done in public schools; maybe it can't be done in schools at all. For sure it can't be done by a back-to-basics, teacher-as-god approach.

Christopher Brockman
Dryden, MI

spotlight

(Continued from p. 49.)

Other media projects under way include writing a science fiction movie for Doug Trumbull and Richard Yuricich (who created the special effects for *Close Encounters of the Third Kind* and *Star Trek: The Movie*) and writing a 13-week science series for Adrian Malone, the producer of *The Ascent of Man* and *Cosmos.* Airing soon on the CBS Evening News in San Diego will be a two-minute, thrice-weekly science and technology series that will be offered for syndication to other TV stations. Pearson and Shaw have also been signed as consultants for Clint Eastwood's forthcoming movie, *Firefox*; and with this issue they start a regular column in REASON.

Pearson and Shaw's accomplishments remind us that political activity and writings on economics and politics are not the only avenues through which to encourage nongovernment solutions to social problems. By presenting in popular form impeccable scientific evidence that carries no "suspect" ideological baggage, these remarkable scientists—Pearson has a degree in physics from MIT and Shaw a chemistry degree from UCLA—are planting seeds of doubt that can take root in soil that politicos could never reach. The blossoming will have, I predict, a significant and positive effect on popular ideas about the proper role of government in people's lives.

Sharon Presley is a writer, the national coordinator of the Association of Libertarian Feminists, and a long-time libertarian activist.

taxes

(Continued from p. 48.)

And yet... the heart trembles at the opportunities. And at the possibility that it could all be for nothing. In 1932 Franklin Roosevelt was presented with just such an opportunity. He quickly set in motion those forces that have brought us what we have today. Now, Pres. Ronald Reagan has won office at a similar historical cusp. If he holds true to his own past beliefs, we will indeed see some changes for the better.

Timothy Condon, a member of the Florida bar, is a tax specialist with the Condon & Vollrath Tax Service in Tampa, Florida.

Do you have a tax question? Mr. Condon may have the answer. Send your query along to REASON Taxes, Box 40105, Santa Barbara, CA 93103.

(A limited number of reader questions can be answered in print; personal replies cannot be made.)

classifieds

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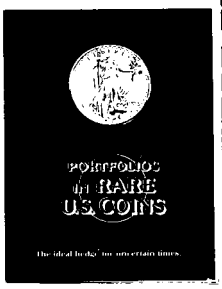

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